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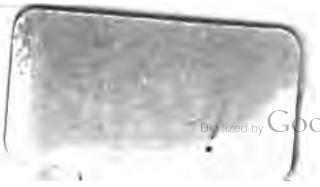

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THE

MAYOR'S COURT OF LONDON

PROCEDURE ACT, 1857,

WITH NOTES;

AND

An Outline of the Practice thereof;

Forms of Procedure and Table of Costs;

SECOND EDITION, GREATLY ENLARGED,

BY

John PYM YEATMAN,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW,

Author of a History of the Common Law of Great Britain and Gaul,—An Introduction to the Study of Early English History,—An Exposure of the Mismanagement of the Record Office,—A Treatise on the Law of Trade Marks, &c., &c.

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PREFACE TO FIRST EDITION.

THE object of this little work is twofold—to supply a want in the profession of a guide to this important court, and to endeavour, if possible, to draw attention to the ancient rights and privileges of the city, that the silent encroachments of time and envy may be swept away, and the court restored to its former state of usefulness.

After centuries of attempting complete centralization, even in the face of the increased facilities afforded by railway communication, the country is finding out the greater virtues of localization, so well understood by our ancestors; and the object of modern legislation would seem to be to give speedy and cheap relief to suitors in the very presence of their neighbours, so that the administration of such relief may have a valuable effect upon those who might otherwise venture to do wrong unto others.

There is a talk, and it will probably be a long one, of establishing throughout the country "Courts of First Instance." This court, if not fettered by encroachments, has the full powers of such a court, with the greater recommendation of being no innovation, but of an age superior to that of any court in the

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kingdom. It is to be hoped that modern law-reformers will let it alone.

It is a very remarkable circumstance that although the legislature had expressly authorised the application of the common law rules to this court, as well as the sections of various Acts of Parliament; no such application has been made to render those sections capable of being applicable for the working of the process of the court, thus leaving to the learned Recorder the task of "making bricks without straw;" the necessary result is that a great number of the orders made by the Court and Registrar are illegal and without warrant.

The author, in supplying an outline of the practice of the court, has borrowed very largely from the able treatise of Mr. Woodthorpe Brandon; for the observations upon the judgment of the House of Lords in Cox's case the author is alone responsible.

3, Pump Court, Temple, E.C.
October, 1870.

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PREFACE TO THE SECOND EDITION.

THE Common Law of England is not to be traced to any Saxon origin, but is mainly British, tempered by Roman Institutions; by British is meant Gaellic, the title of which is preserved in that of the eldest son of the King of England, who is still the Prince of Wales, or of the Gauls, as the French designate him; and again in the name of England itself—the land of the Angles —or to translate the word literally—of the Gauls— Angle being the equivalent of An Gael—the Gaul.

In the customs of the city of London, and in its municipal government is to be found a greater admixture of Roman law than perhaps is to be found in any other part of the kingdom. London, as recent discoveries have confirmed us, was more than any other English city, Roman, and remained so during the troublous times which elapsed from the departure of the Roman Legions to the period when the firm hand of Canute grasped the reins of the disjointed kingdoms and wielded the mass into one great Norman kingdom.

London during this period retained her own govern ment and her own laws, despite the marauding Saxon or the ravening Dane, and hence to this day she boasts of Roman Institutions and Roman Courts, and as the Mayor, like the old Mayors of Paris, is her chief magistrate, so his court is the *caput regni et legum*, the chief court of the empire, and so three centuries ago it was regarded by the great Lord Coke himself.

Whilst almost every Court in the kingdom has changed, not in forms, but in substance, London still

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retains in her civic customs the purest forms of ancient Celtic laws, though reformed upon a Roman model, and now, unhappily, it has the only court governed by the practice of the old common law: London has witnessed the birth of the courts at Westminster with their ever increasing powers without jealousy. Those courts compared with her own antiquity are but of yesterday, and she has but recently witnessed their decease, or rather transformation into uncertainty, each event having but little interest for her since her own rights have been by successive monarchs secured to her by the most solemn charters, the chief enactment of which was ever the same, that none but a judge of their own choosing should judge the same men of London.

Modern encroachments, as well perhaps as ignorance, have tended to break down the barriers and to incorporate the civic courts as a portion of those at Westminster, but as it was clearly laid down by the Master of the Rolls in the case of Jacobs *v.* Brett, 20 L.R., Eq. 1, rights of so sacred a nature cannot be taken away without express enactment, and the only enactment on the subject, if fairly construed, would tend rather to increase than diminish the ancient priveleges of the city; these enactments are embodied in the Act of the 20th and 21st Vic., c. clvii, entitled the Mayor's Court of London Procedure Act, 1857, the subject of these pages.

The author wishes to acknowledge the practical help given tc him by Mr. C. R. Y. Macdonald, Student of the Middle Temple, in passing these pages through the press.

6, Kings Bench Walk, Temple, E.C.
January 31, 1878.

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INTRODUCTION.

THE expressed objects of this Act, according to the preamble, are two-fold: to abolish certain functions and jurisdictions of the Sheriffs' Court, and to extend the powers and simplify the practice and mode of procedure of the Mayor's Court.

It is greatly to be feared that this latter object has not been fully obtained. The Act has been passed in such apparent ignorance of the full extent of the power of this court, and its wording is in many points so obscure and badly framed, that it is doubtful whether the powers of the court are not in some measure crippled, and whether it possesses the full powers it formerly enjoyed; at any rate, in practice it only exercises a moderate portion of them.

The original jurisdiction of this court was both criminal and civil. Its criminal jurisdiction has by successive usurpations been frittered away, and finally, by the Act of Will. IV., although nominally the Mayor of London still presides and justice is administered in his name, all real power is transferred to Her Majesty's Judges, who, according to rota and under certain regulations of their own, periodically sit at the Old Bailey, a proceeding quite contrary to the spirit of the Ancient City Charters.

The day was when the Mayor and Aldermen sat together to administer justice in all cases, even in those of High Treason; and it was only on very remarkable occasions, such as state trials, and rebellions of importance, that High Com-

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missioners appointed directly by the King, usually the highest nobles and the King's own Council, were appointed to sit with them. Now only a shadow of their former greatness remains to the ill used civic authorities.

The Civil Jurisdiction was also of the highest nature, and the Lord Mayor was looked up to by the citizens as a judicial authority, who combined within himself the powers of the highest Common Law Judges with the mild sway and authority of the Lord Chancellor, to temper and soften the rigidity of the Common Law.

The Mayor's Court had concurrent if not exclusive jurisdiction, in cases affecting the citizens, with the High Court of Chancery, as well as with the Superior Courts at Westminster, and long prior to their institution it was the highest court of judicature in the land. Of late years the equitable jurisdiction has almost fallen into disuse. These jurisdictions are in theory quite distinct, and, just as formerly in Westminster Hall, an injunction may be obtained on one side of the court to restrain the action of the other. When they so became separate it is impossible to trace, probably with the rise of the separate jurisdictions of the high courts of the kingdom, and in all probability the equitable jurisdiction was administered by the Bishop, nominally for the Lord Mayor. The equitable practice is similar to that of the Court of Chancery.

The practice of foreign attachment, which is of very ancient date, seems to have been lost to the courts at Westminster until the recent Common Law Procedure Acts, which obtained for those courts a very similar power.

The Mayor's Court always used its power of obtaining discovery on its equitable side in aid of this practice.

It has also a practice, quite peculiar to itself, in awarding restitution of apprentice premiums in city indentures of

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apprenticeship; also in sequestration, disfranchisement, apprenticeality, *feme sole* merchant, arrest for better security in certain cases of defamation and debt on *concessit solvere*, the latter a difference more in form than in anything else, and in penal actions under Acts of Common Council.

In these, and many other matters, the Mayor's Court has laws and a practice quite distinct from the general laws of the kingdom, which it would be highly interesting to trace to their origin; but a want of space demands for them only a passing notice, they, however, prove conclusively the high origin and independent history of this great court.

The local jurisdiction, that is the limits within which process is executed by the officers of the court, is the City of London and liberties thereof, and two hundred yards beyond.

As this court exercised its present jurisdiction long before the settlement of the great courts at Westminster, it naturally had exclusive jurisdiction in all real actions, except when any special commissions for the time superseded its powers, and, even after the establishment of those courts,—pro of their equality—it possessed exclusive jurisdiction in all real actions. The jurisdiction for the trial of personal actions was, at that time, at the will of the plaintiff, who might lay the venue where he pleased, subject only to this disability, that the local court, whether of a county or of a city, could only enforce process within its own limits; the institution of the superior courts, which, as contradistinguished from this court, were the King's general courts, gave rise to a power to send process by means of the sheriffs into any local jurisdiction, and this without impairing the rights of the court into whose jurisdiction it interfered, any more than the special commissioners sent by the King interfered with the general jurisdiction of the Lord Mayor in criminal cases.

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In this respect only were the stationary or special King's Courts inferior to the itinerant courts of the King, which, no doubt, set the sheriff in motion wherever they went.

The Mayor's Court still had complete jurisdiction in all cases, except where, by the will of the party or by the special authority of the King, that power was superseded or exercised in a different locality; and there was this difference between the local courts of the King and other local courts and this court, proving its equality with the superior courts; from all other courts appeal might be made to the King's courts at Westminster, but from this court no such right of appeal existed till the passing of this Act.

As a corollary to the exercise of jurisdiction over persons resident out of the jurisdiction arose the practice of arrest for bail, if the person could be found within jurisdiction they were arrested till they gave bail; and so with goods in the City, whether in the hands of the owners or not, another great power exercised by no inferior or local court, and the power of the court to arrest persons in this matter is not affected by the recent Act for the abolition of imprisonment for debt.

The fact that execution would not issue out of one local jurisdiction into another without, in fact, renewing the proceedings, gave an immense superiority to the courts at Westminster; hence, probably, has arisen the confusion as to the powers of this court, now this superiority has ceased, or rather this necessity of renewing proceedings, for by s. 48 of this Act execution can issue on the judgment of the court into any county by simply sealing the writ in any of the offices of the courts at Westminster, so that the court indirectly participates in this great advantage, and for this purpose the courts are as one and the same.

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The King regularly sent commissioners into every county, city, and borough in England, except to the City of London, both for the trial of civil causes and for gaol delivery, but he was bound by Charters, which were regularly renewed at each successive Coronation, not to send Justices to judge the men of London, a privilege enjoyed by no other city or place in England, and this shews conclusively the superiority of the City to every part of the kingdom, and the equal if not superior dignity of its Judges with the permanent Judges at Westminster.

The statute 3 Ed. I. c. 35, took away the power of attachment which many petty and local courts had assumed in imitation of the City of London; but the rights of the City were expressly reserved, and so the practice of foreign attachment incidentally affirmed.

As this is a King's court it has always been considered in the superior courts unnecessary to aver in the pleadings either that the parties reside within its jurisdiction, or that the cause of action arose within it, as must be done in matters coming from an inferior court. In the case of *Banter* v. *Self*, 5 Taunt. 239, the Court observed that the uniform course of pleading had been to omit such averment ever since the time of the year books, and how long before was not mentioned, it was therefore too much to ask the court to overthrow so uniform a practice without citing so much as a single applicable case in favour of that request; of late years, however, an improper practice in derogation of the rights and liberties of the City has crept in, and in *Huxam* v. *Smith*, 2 Camp. 20, at *Nisi prius*, Lord Ellenborough held this court to be an inferior court, and allowed a defendant to rebut the *prima facie* evidence of the records by proof that cause of action did not arise within jurisdiction, and this case has recently been followed by the decision in that of

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The Mayor of London v. *Cox*, 2 Law Reports, E & I. A. C. 239 : and also by s. 12 of this Act it would seem, at first sight, to be inferred that in all actions under £50 either the defendant must have resided within the jurisdiction, or the cause of action must have arisen within it ; this would appear to give some colour for the decision of the Judges in Cox's case ; but, this legislation was evidently founded upon a mistake, and it cannot, by inference, take away any power this court possessed ; and, indeed, it may be contended that the only effect of the section in these cases is to limit the right to plead the jurisdiction, without touching the real question of jurisdiction, which remains as it existed before the passing of the statute—that is, that subject to the disability of being unable to carry its own decrees into effect out of its jurisdiction there is no limit to it.

We now come to the case of *The Mayor of London* v. *Cox*, which is of such importance that it is impossible to evade a full consideration of it. In that case a plaint was laid in this court by Buckmaster & Co., agents of one Farquharson, to recover a debt of £86 ; the return was made that he had nothing, nor could he be found within the city. Proceedings in attachment were then taken against Cox & Co., who were personally found within the city, though neither residents nor citizens ; they alleged that neither themselves, nor either of the parties resided or carried on business within the jurisdiction, and prayed prohibition in the Court of Exchequer. The Mayor pleaded the custom, etc., to which there was a demurrer. On suggestion and writ the Recorder appeared in court in the usual manner and certified by word of mouth that the custom was as stated in the plea. The court gave judgment for the plaintiffs in prohibition, and the Exchequer Chamber affirmed the judgment. The case was then brought to the House of Lords on error,

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and the Judges being called in, Justices Willes, Blackburn, Shee, and Smith, and Baron Pigott attended, the first of whom delivered the opinion of the Judges; counsel having been heard, the following questions were put to the Judges by the Lord Chancellor: first—whether the plea was a sufficient answer to the declaration? and, secondly—whether the garnishees could maintain an action for prohibition without having pleaded? Mr. Justice Willes delivered the judgment of the Court. The first question was answered in the negative and the last in the affirmative, and then Lord Cranworth delivered the judgment of the House in accordance with their opinion, simply stating the facts and the pleadings, and that he entirely concurred with the very able opinion of the Judges who had investigated the whole subject matter with a care and attention rarely equalled, and had so carefully exhausted the subject that it was unnecessary for him to do more than express his ready concurrence with their opinion; and Lord Westbury, the only other Law Lord who was present, was still more brief and equally satisfied with the elaborate reasoning of the learned Judges. Lord Cranworth did cite one of the authorities referred to by the Judges, and expressly based his decision upon the opinion of Lord Coke in his comments on the Statutes of Gloucester.

It is necessary to analyse this judgment, and one is struck with astonishment at the very small portion of it which has any real bearing upon the points at issue, and with disappointment at the discovery that, so far from the learned Judge having exhausted the subject, he can only have read portions of the authorities he cited, and that had he read the whole he must have come to a precisely opposite conclusion. Lord Cranworth, unhappily, too readily credited the learned Judge with exhaustive diligence, and the only autho-

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rity he cited, that of Lord Coke, falls also within this observation, and is directly opposed to the decision in this case. There are two great questions which have to be decided before the judgment can be sustained; the first is, whether the custom is bad? and the second, whether this is an inferior court? and Mr. Justice Willes makes them mutually depend upon each other.

Mr. Justice Willes proves both positions by that process known to logicians by the term of arguing in a circle, he proves the custom to be bad by assuming the court to be inferior, and he proves the court to be inferior by assuming the badness of the custom. He says, "the custom is bad because it transgresses the local limits, it is therefore an accessory to a limited jurisdiction, and as it extends beyond the limits it is incongruous and void," and the learned Judge asserts that this custom has been condemned by Act of Parliament, and in support of the proposition he cites the Statute of Westminster, with Lord Coke's commentaries upon it, and he adds truly, that the statute describes the very sort of custom set up in the plea, but it does more, it indirectly declares the practice to be lawful for all the King's officers without exception. There is no doubt but that this is a King's court, so that this statute absolutely asserts the custom in its favour, and if this be so, according to Mr. Justice Willes' logic, it proves that this is not an inferior court.

Everything turns upon the construction of this statute, and therefore it is necessary to look very carefully into its object, as well as into its every word, to determine its scope and meaning.

It is clear that the mischief intended to be provided against was that certain Barons and others, who had the power of holding pleas of contracts, covenants, and trespasses of their

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men and tenants, usurped the power of trying cases out of their jurisdiction, and by attaching the goods or persons passing through would thus prejudice the King and his crown by depriving him of his fines and amercements, and Bracton, who wrote on this statute, takes this view of it, and clearly defined the persons to be included to be those only who had a mere liberty within a general jurisdiction to hold a court "*soc et sac*," and of such were the Lord Fitzwalter, to whom with others at divers times the Lord Mayor had granted liberty to hold such courts within their jurisdiction. The Lord Fitzwalter, by virtue of his honour of Barnard's Castle and by grant from the Lord Mayor, held a court where he might even try treasons, and had stocks and imprisonment in his castle, with error, lying to the court of Hustings, and when he came to that court by custom the Mayor rose to receive him, and he sat by his side and gave the Mayor's judgment instead of the Recorder. He was also chastilian and banner bearer of the City of London, these rights however were disputed in the reign of Edward III., and gradually became extinct.

The Lord Mayor was a King's officer and a Justice in the King's court, as he is to this day; he was so described in the charter of Henry I., which goes still further and expressly declares that none other than the justiciary chosen by the citizens shall be justiciary over the same men of London.

The Lord Mayor was one of the twenty-five Barons to whom the maintenance of the provisions of the Magna Charta was delegated, see *Hallam's Middle Ages.*

In the preface to *Stowe's London,* Lord Allwyn, Lord Mayor, is described as cousin to the noble King Edward, and Alderman of all England. So late as the reign of Richard II. the Lord Mayor ranks in the assessment for the poll tax

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with Earls, the Mayor's of other towns with Barons. So late as 7 Edward IV., when Sir Thomas Cooke was tried at Guildhall for high treason, the Lord Mayor sat with his brother commissioners, the Duke of Clarence, the Earl of Warwick, Lord Rivers, and others of the King's council, 1 Edward III., and probably on many other occasions, the Lord Mayor was one of the Justices in Eyre. It is also remarkable, as showing the importance of the City of London, that the Sheriffs thereof have also in charge the County of Middlesex. *Wilkes' case*, 4 Burr, 2560.

The title of the court has always been that of the Sovereign, and at the present day, and in this very Act of Parliament, it is styled The Court of our Sovereign Lady the Queen holden before the Mayor and Aldermen of the City of London.

At page 256 of his judgment, Mr. Justice Willes states that Lord Coke styled the Mayor's Court an inferior court, and that, with a circumstance which shews that he meant absolutely, and not merely relatively, inferior; a careful perusal of the words of this great judge will shew that the word inferior was used to indicate certain local courts relatively to the Court of London, and not to describe that court as an inferior court. In some of the statutes upon which he was commenting, London only is mentioned; and it was held that by equity, the statute extended to other courts of inferior rank of a like nature, such as York, Lincoln, Winchester, etc.

Mr. Justice Willes seems to insinuate that Lord Coke stultified himself, and he speaks of his contradicting himself in the same breath; but in fact Lord Coke is quite consistent, and it is his commentators who have fallen into error. Lord Coke describes this Court and City as "*caput regni et legum*," and speaks of its great antiquity, superior to that of

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the "*aula regis*," and this consideration alone should satisfy the enquirer that this court is not an inferior court. The power of the courts of York, Lincoln, and Winchester, and other courts of a like inferior nature, was inferior, because it was derived out of the Court of Common Pleas; it may be said with some truth, that that court derived its jurisdiction from the Lord Mayor's Court; it did in fact obtain a large share of its business out of it, but neither that court nor the Courts of Queen's Bench or Exchequer presumed to interfere with the Mayor's Court in actions of a local nature, the Mayor's Court alone possessing jurisdiction in such cases. Lord Coke says, 2nd Inst., p. 327, "At the common law, in case of a foreign voucher in the Hustings of London, the plea was adjourned before the Justices in Eyre, when they came to the Tower of London, for the Court of the Hustings in London was not derived out of the jurisdiction of the Court of Common Pleas, as other courts that have power to hold pleas real are, and therefore the adjournment was before the Justices in Eyre. For the antiquity of this Court of Hustings, among the laws of St. Edward, you shall read '*Debit enim* in London *quæ caput est regni et legum semper curia domini regis singulis septimanis die Lunæ hustingis et teneri*, etc.'"

And this is the authority which, upon second-hand, Lord Cranworth quoted, to prove that this court is of an inferior nature, and properly subject to the Superior Courts at Westminster. Mr. Justice Willes, in spite of this description, states that the Mayor's Court "has always been classed with the courts of other cities and boroughs."

But there are other circumstances which show this to be a very different court from those of other cities. It has always been the practice of this court to grant new trials

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when it pleased, a privilege only exercised by courts of a superior nature, and its practice in all essential particulars has always been similar to that of the Superior Courts at Westminster.

Error lay from every one of these courts to the King's Bench. Y.B., 11, Ed. IV. 10. Case of Bristol.

Error lay from the Common Pleas and Exchequer to the King's Bench until 21 Ed. III.; and from the King's Bench to Parliament, until 27 Eliz., when error from the King's Bench lay to the Exchequer Chamber.

Error never lay from the Lord Mayor's Court to either of the Superior Courts at Westminster, nor even to the Exchequer Chamber, although it did from all other courts of a like nature. I. Geo. 14, 2 Sid. 178; 1 Keb. 32; 6 Mod. 123. In successive ages attempts were made silently to undermine the powers and privileges of the City of London, indeed the number of charters confirming its privileges shew how often attempts were made to get rid of them. Proceedings in error appear from Parliamentary Roll of 22 Ed. I., sec. 90, that a writ was issued to certain justices, etc., to do justice according to the custom of the City of London, and it was stated that upon this the King may make association and another writ. "*Si non omnes*," as he shall do in an assize or in oyer and terminer, Fitzherbert 22; of course many of the precedents of that age are not to be entirely relied upon on account of its dishonesty; but they are not likely to err in favour of this court, or to grant it too much dignity. By degrees the Court of Error in St. Martin's-le-Grand was established, there was no such permanent court, and no creation; but a fresh commission on each occasion directed to the delegates (usually latterly five of the judges of the superior court—the same number by the way who determined this question in the House of Lords) and three

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Commissioners were to examine the record, etc., and from their judgment a writ of error lay to the House of Lords. Pulling, 173. It appears from Fitzherbert that Lord Chancellor Parnham devised this writ—he was the first common lawyer who held the great seal, and a man of great learning; he was Chancellor from 1341 to 1343, and it was evidently a novelty, for it appears from the Register, f. 24, that the matter was "diligently examined." This seems to be the date of a step for silently undermining the powers of the City.

Error from the Sheriff's Court and other inferior courts in London lay to the Lord Mayor's Court. Again, this court had an equitable jurisdiction coextensive with that of the Court of Chancery, and existing for ages before that court was established—it is said, derived from the power of the Roman Prætors. It is clear that such jurisdiction cannot be raised by grant. Referring to the dignity of the citizen in early times, Matthew Paris writes, p. 744, "*Cives Londoniensis quos propter civitatis dignitatem et civicum antiquam libertatem, Barones consuevimus appellare.*" The Lord Mayor had sole jurisdiction in all matters of wardship, and levy of escheat; and he was Coroner for his district: in fact, he possessed regal powers, and exercised them always in the name of the King. The courts at Westminster are bound to take judicial notice of the Mayor's Court, Bridgman, 301. And the Recorder appears personally and certifies what are its customs, against which the court dare not act.

By Edward IV. Charters, p. 2, the City have a right to prove their customs orally—and once proved it is held to be law.

No real action relating to lands in London could be brought except in this court; 4 Just, 247; Dier, 15; Ely,

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317. Great stress is laid upon the admission of the learned Recorder that the Mayor's Court is an inferior court. No one can fail to respect that learned functionary both as an able lawyer, and that which is far better, as an upright judge; but if he in mistake made such an admission, that would not detract from the power of the court, and perhaps he had only in his mind a subtle distinction of the inferiority amongst equals; for there is no doubt that even the Superior Courts at Westminster are not of equal power. Prohibition lay and still lies from the Queen's Bench to the other courts, and they have in comparison a limited jurisdiction. Lord Denman assumed that it was an inferior court, and held that the cause of action must be alleged to accrue within it; but this is clearly an error, and if this were a badge of "inferiority," the practice of the Lord Mayor's Court would at once prove its "superiority," for it has always been opposed to it.

There is one argument which may be deduced from this very custom, which at once proves by prescription the superiority of this court. The Statute of Westminster clearly shews that the Judges of the King's Courts possessed this power, this court alone of all of them has retained it.

Another may be drawn from Lord Coke's commentary on it, which clearly disposes of the construction placed by Mr. Justice Willes upon his words; the object of the statute was to prevent the King being defrauded of his fines; how could he be so defrauded in his own court?

Mr. Justice Willes argues on the authority of *Laughlin* v. *Taylor*, 6 M. & W. 695, that this court gains nothing by the recognition in the Act of Parliament of its superior powers; but if it gains nothing it surely loses nothing, and therefore merely styling the court at Westminster "superior" will not make this court inferior: besides, that is qualified

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by the explanation of the meaning of terms; see sec. 54 of this Act.

By the 37 Hen. VIII. c. 12, the Mayor of London has exclusive jurisdiction in all questions relating to tithes within the City; but as this was only granting to the court that which Henry wickedly and unlawfully assumed, no great argument can be drawn from it; more may be gathered from 7 Comyn's Digest, 139, where it is laid down that the superior courts have concurrent jurisdiction with the Lord Mayor's Court to grant prohibition to spiritual courts holding pleas of tithes in London, which may refer to a more ancient practice. No argument can be drawn from the fact that prohibition lay from the Court of King's Bench to this court, for Lord Coke lays it down, 13 Jas. I., Mich. T., that the Court of King's Bench hath power to prohibit all particular courts which hold pleas, though they have a general jurisdiction by Act of Parliament, if they exceed their authority. It appears by the Register a prohibition was granted by the King's Bench to the Exchequer. And so if the Judges of the Common Pleas do hold pleas of an appeal, a prohibition is to be granted by the King's Bench; and Lord Coke proceeds in this imperious style:—"We, here sitting in this court, may prohibit any court whatsoever if they transgress and exceed their jurisdiction, and there is not any court at Westminster Hall but may be by us here prohibited if they do exceed their jurisdiction, and all this is clear and without question;" but this statute prohibits the courts at Westminster from prohibiting this court.

And if any confirmation of the sincerity of the great chief be wanting, it may be found in the fact that he did not shrink from issuing prohibition even to the High Court of Chancery when that court began to interfere with its process.

In *Ballard* v. *Bennett*, 2 Burr, 777, it was resolved by the

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Court of King's Bench, that it would not permit a bye law to be objected to in a summary way upon notice on the return of a *habeas corpus*, in any other cases except those from the City of London.

The result of the authorities seems to be that the Judges are quite wrong in assuming that this court was ever a court of an inferior nature. That it was always a King's Court of the highest authority, subject, doubtless, like every court prior to the institution of the courts at Westminster to the difficulty of being unable to carry out its own process, a difficulty which the present statute has removed—see section 48, so that, in point of fact, it may be broadly asserted, that the statute of Westminster, instead of disposing of the pretensions of the Lord Mayor, confirms them in the clearest manner.

The point has again arisen, and in a most unlooked for manner, and the case of *The Mayor of London* v. *Cox* has been practically overruled, following upon the precedent set by that case, the Courts at Westminster, especially the Court of Common Pleas, instead of extending as intended by the Acts, determined to stamp out the powers of the Mayor's Court, and to carry out that intention the solicitors who dared to bring actions within it in any case in which any part of the cause of action—that is, in which any material fact connected with the case arose out of the City of London—were personally mulct in costs.

Not only did the Common Law Courts practise this cruelty daily; but the mania invaded the calm precincts of the Court of Chancery. The Master of the Rolls committed himself even more fully than the Judges of the Court of Common Pleas; he scorned to shelter himself under the flimsy protection of the stranger theory invented by that court, and he boldly overruled the Act of Parliament.

Probably many hundreds of cases were then decided in the

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courts, and all wrongly, and possibly millions of pounds were affected by it—that is improperly given to those who were not legally entitled to receive them. It was only in 1875 that an opportunity arose to prove the illegality of their procedure—the case of *Evans* v. *Nicolson* was placed in the Author's hands—instead of applying for a prohibition, as he was instructed, he obtained his client's consent to plead to the jurisdiction, and this gave an opportunity to bring the decisions of the Superior Courts to be tested in the Mayor's Court itself. The words of the statute are perfectly clear that no defendant shall be permitted to object to the jurisdiction of the court in or by any proceeding whatever except by plea (section 15), and accordingly the learned Recorder at once pointed out that this being so, and the subject matter of the action being under £50, in which case no plea is permissable (section 12), judgment must necessarily follow for the plaintiff. The Author, however, cited some of the numerous cases decided by the Superior Courts at Westminster, and the Recorder from respect for these decisions refused to decide the point, but gave the parties leave to proceed in the Courts at Westminster. The Author himself moved the Court of Common Pleas, and, as he anticipated, was refused relief. The Judges Coleridge, C. J. Archibald, Denman, and Grove, J.J., were met by their own decisions being pressed upon them, and they were compelled to disregard them and to submit to the statute.

The decision of course was to refuse a rule; the next day the Author again appeared in the court and applied for a rule to prohibit the Mayor's Court from proceeding to try the case which the day before the same four judges had solemnly declared that it had power to try. The court struggled long and vigourously to escape so absurd a decision, and even adjourned the hearing to the next day to give Mr.

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Justice Brett an opportunity to find out a way of escape; but Mr. Justice Brett failed to find one, and the court being pressed were compelled to grant the rule. The reporters and editors of the *Law Reports* were too complacent to report these cases, and to the *Law Times* alone is attributable the honour of doing so; strong proof of the poor stuff contained in the *Law Reports* and the absolute necessity of supporting more honest and independent reporters. These cases are reported at pages 664 and 778 of vol. 32 of the *Law Times'* Reports, N. S. 1.

For a time the Courts at Westminster sullenly pursued their practice, and continued to prohibit the Mayor's Court, till the case of *Hawes* v. *Pavely*, 1 L. R. C. B. Div. 1, was brought before the Appeal Court, in which the decision of *Evans* v. *Nicolson*, No. 1, is expressly affirmed by the weight of the judgment of the Lord Chief Justice of England, the Master of the Rolls, the Lord Justice Mellish and Mr. Baron Pollock.

The Master of the Rolls, in delivering judgment, practically affirmed that it was impossible to impute to the legislature so absurd a construction as would be established if both decisions in *Evans* v. *Nicolson*, Nos. 1 and 2, were good law.

The case of *Jacobs* v. *Brett*, and *Cox* v. *The Mayor of London*, were both cited in that case; but none of the Judges, including the Master of Rolls, seemed to be aware that they were practically overruling those decisions, and that for the future all power to prohibit this court is over. That such is the case is clear from the consideration there are two modes of objecting to the jurisdiction of a court by Plea within it and by Prohibition outside it. The decision in *Hawes* v. *Paveley* can only be sustained by both sections 12 and 15 of the Act, certainly not by 12 alone, for that section only relates to the

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procedure within the court, which would rather strengthen the power of the procedure without; and, therefore, the words of section 15, "in or by any proceeding whatever," must be invoked, and these words are not limited to cases of any particular amount, so that if any weight is to be attached to them the same weight applies in every case—in other words, the power of prohibition to the Mayor's Court if it ever existed—as a fact it never did—is taken away by the statute, and this is only consistent with the ancient law on the subject; for if the King cannot appoint a judge for the Court of the City of London, and the Courts at Westminster possessed no power of appeal, it is surely inconsistent to allow two judges in Banco or one in Chambers to sit in judgment over it.

Thus, by the aid of the statute as well as by law, the jurisdiction of the Courts of Westminster over that court is utterly set aside; and, indeed, the Court of Common Pleas has indirectly extended the jurisdiction to all cases in which a letter has been received within the City acknowledging the cause of action, though the whole cause of action arose without; this is bad law, for a letter speaks from the place where it is posted, but the case is of less importance when it is established, as it must be sooner or later, that the Courts of Westminster have no power to prohibit the court in any case whatever.

Procedure of the Court.

The form of procedure in this court is very similar to that of the Superior Courts at Westminster, and in equity cases to that of the Court of Chancery, and where nothing special is to be found respecting it, it may be assumed to be the same.

The first noticeable difference in an action is in its very

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commencement. The action is commenced by plaint, and no writ is issued; why this should be so, or when the omission first arose, it is difficult to say. The writ of subpœna issued is precisely similar in form to the writ which issues from the superior courts; now, however, under the ss. 3, 7, 16 and 17 of the Common Law Procedure Act, 1852, a writ ought to be issued in the same manner as in the superior courts. The fact that sec. 2 of that Act is not applied is immaterial; the framers of the order in Council very properly assumed that this being a Queen's Court, actions would be commenced by writ of summons in the Queen's name, and the sections which applied clearly empower the court to issue these writs, for they describe how they are to be endorsed, and what they are to contain and what they need not contain.

All actions under the Bills of Exchange Act, must be commenced by writ of summons. Writs of Injunction may be applied for under sec. 82 of the Common Law Procedure Act, 1852, and also in the actions of ejectment under sec. 148 of the Common Law Procedure Act, 1852. Writ of *scire facias* under sec. 132 of the same Act, writs of revivor under sec. 134, writs of mandamus and injunctions under ss. 74 and 79 of the Common Law Procedure Act, 1854, and by sec. 223 of the 1852 Act, and 98 of that of 1854, power is given to the Judges to make or alter writs, and these powers are by the order in Council of the 17th November, 1863, conferred upon the Judge of this court.

So that it appears quite inconsistent that actions are not commenced in a legitimate manner, and consistently with the dignity of this High Court, by issue of the Queen's writ.

It may even be fairly contended that by virtue of the 16th section of the Common Law Procedure Act, 1852, which em-

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powers and describes how writs are to be served upon corporations and hundreds, etc., that execution may issue from this court, directed to the Sheriff of any county, just as in the case of execution from the superior courts ; for all the powers of issuing execution under secs. 123, 124, 125, 126 of the Act of 1852 are applied to this court, and they clearly include writs addressed to Sheriffs of counties. By sec. 48 of this Act, upon an affidavit verifying judgment of the court, a writ of execution may be sealed by the sealer of writs of any of the superior courts, and from thenceforth proceedings taken as upon writs issued on judgments obtained in the superior courts : it may be doubtful how far it may now be necessary to follow this practice, for it can scarcely be contended that if power is given to sue parties who are out of the City and to serve them with process that the further process of the court shall not extend to them. However, instead of a writ, a precipe is filed, see form No. 1 and a note or note of action is served on defendant, see form No. 2, containing the date of the entry, the names of all parties to the action, and their representative character, if any, and the proceedings are the same in a suit. This is additional information to that which is contained in an ordinary writ of summons of the amount sought to be recovered ; as in a writ, no form or cause of action is stated in the note of action, but annexed to it must be served a notice, see form No. 2, which has the effect of giving particulars, and if these are insufficient, the defendant may, within the eight days limited for his appearance, apply for better, and if on their being given he should pay the money, he can do so without paying the costs of obtaining such better particulars. The 7th sec. of the C. L. P. A. 52 rendering it necessary to declare in writing the plaintiff's residence and occupation is obligatory, and omission is a contempt of court. Several

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causes of action by and against the same parties and in the same rights may be joined, secs. 40 and 41, C. L. P. A. 52.

It will be observed that the notice is in effect the same as that required by sec. 25 of the Common Law Procedure Act, 1852, and the practice upon it in signing final judgment for want of appearance at the end of eight days, without further notice is also similar. This is done by virtue of the ancient practice of the court, the sections of the Act applicable to special endorsements not being in fact included in the order in Council. As the superior courts borrowed the practice from the Mayor's Court, it was unnecessary to return the loan by presenting these sections; the fact that ss. 32 and 33 of the Act of 1852 are applied shews that this practice is in fact recognised by the legislature.

If the amount claimed in the particulars of demand or notice of grounds of action exceed the amount which the defendant considers to be due, he can apply to stay proceedings by payment of the real amount due; this is similar in effect to the practice of paying into court, but far superior, insomuch as it brings the case to a speedier and cheaper issue. It is a practice which might advantageously be borrowed by the superior courts.

Any amendment of the plaint or notice is permitted upon terms as to costs, etc., as the Registrar directs.

A copy of the note and notice must be obtained at the registry, and sealed with the seal of the court, and it should, according to Mr. Brandon, be personally served within the jurisdiction of the court, and, for the purpose of service, 200 yards outside the city are included within such jurisdiction.

And by sec 13 of this Act service of note of action, upon affidavit, see form No. 20, that the cause of action arose within the City, the plaint may be served in any part of the

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kingdom of England and Wales; but now by ss. 16 and 17 of the Common Law Procedure Act, 1852, much larger powers are given, which indeed seem to contemplate actions being brought relating to matters far beyond the jurisdiction of the City of London, as sec. 16 includes service of writs on corporations and inhabitants of hundreds and towns, see form No. 20. This section only extends to personal actions, but it is difficult to see how any such actions can be excluded from the jurisdiction of the court. Since these lines were written the case of *The London Joint-Stock Bank* v. *The Mayor, etc., of London & Sarah Griesiell* came before the court (L. R. 1, C. P. D. 1), in which it has been held that a debt due from a corporation cannot be attached in the Mayor's Court, nor can there be a writ of *fi. fa.* against the goods of a corporation, the garnishee; from which it would seem to follow that a corporation could not be sued in these courts, *a reductio ad absurdum.* In that case Lord Coleridge held that, inasmuch as process did not commence by writ, the C. L. P. Acts did not apply. The judgment is evidently bad law and will be reversed. Real and local actions relating to estates beyond the City cannot be brought within it, unless under the general powers granted by the order in Council. If upon affidavit showing that the defendant cannot be served within jurisdiction, in all cases above £10, extra costs occasioned by such service will be allowed, but the amount must be mentioned when the order for such service is granted.

If the defendant cannot be served personally, an order may be obtained on affidavit, see form No. 20, shewing good grounds for substituted service; an attempt should have previously been made to serve him personally, and the copy plaint should be left at his abode or place of business, if that should prove unsuccessful, a second copy plaint should be

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left with the order for substituted service, and then in default of appearance plaintiff may sign judgment, or under sec. 17 of the Common Law Procedure Act, 1852, he may proceed as if personal service had been effected. If defendant admits receipt of copy plaint, and no appearance is entered, on affidavit being filed in proof of such admission, he may sign judgment for default of appearance. If any irregularity has occurred in the service of copy action it must be objected to before appearance is entered.

Entering Appearance.

If no appearance be entered plaintiff can withdraw the action, see form No. 23.

Upon entering appearance defendant must send notice of his having done so to the plaintiff, such notice being sealed with the seal of the court, and if he omits to do so, plaintiff, according to the practice of the court, is not bound to search for appearance, but may sign judgment for default.

The defendant has eight days, exclusive of day of service, within which he can appear, and if the eighth day or other later day falls on a Sunday or holiday, the plaintiff is entitled, in case of no notice of appearance, to sign judgment on the Monday or day following such holiday.

Judgment for default, see form No. 19, may be signed at ten o'clock on the morning of the last day for appearing; but, if defendant has given notice of appearance even after the time has expired, plaintiff is then estopped from signing judgment for default. The appearance waives all irregularities as to service out of jurisdiction without leave, and other irregularities in point of form, etc.; and if the defendant would take advantage of any irregularity, he may do so before entering appearance, and if within the time

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limited for that purpose, he may apply either for particulars of plaintiff's demand, or for his address, or to stay proceedings upon payment of a lesser sum than that claimed.

The appearance is entered by lodging, see form No. 5, in the office of the court, a precipe filled up, and notice thereof must be sent to the attorney, form No. 6, this notice must be sealed and stamped at the time of entering appearance. Notice of appearance may be sent by post in time to reach the office of the plaintiff's attorney before seven o'clock the evening before the morning of the day upon which judgment may be signed for default of appearance, or at any time before judgment is actually signed, if given in time to prevent its being signed. If this notice when sent be not sealed, plaintiff may sign judgment, and it will generally only be set aside upon an affidavit of merits and upon payment of costs.

Each defendant must enter an appearance; an appearance by a defendant in person must give a *bona fide* address, or it will be treated as a nullity, although it would seem that it must be set aside by the court before the defendant can sign judgment; it must correspond with the plaint, and if there is a substantial variance it may be treated as a nullity, or amended at defandant's costs.

If defendant has been sued by a wrong name, he may appear by that name or by his right name, stating that he was wrongly described, and this he may do at any stage of the proceedings; plaintiff can amend at his own expense at any time.

An infant can sue by guardian, and wife by next friend, just as in the superior courts—see form No. 39.

Declaration.

Defendant having appeared, and given notice thereof,

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plaintiff may immediately deliver declaration, or, as it is called in this court, copy plaint, which must correspond with the plaints; but it would seem that he can take no step towards doing so, until notice is given, and the reason of this would appear to be, because if no notice is given, he can sign judgment for default of appearance, and it would therefore become unnecessary. If declaration is not delivered the day after notice is given, the next day the defendant may demand declaration, see form No. 7, and if it is not delivered within four days afterwards exclusive of the day of demand, and the plaintiff fails to obtain more time from the court, the defendant may sign judgment for want of prosecution; reasonable time may, however, be obtained by order of the Registrar at Chambers. No appearance need be entered on the record. See the 33rd sec. of the Common Law Procedure Act, 1852, where some only of Defendants appear.

If defendant appears and gives notice thereof, plaintiff can then deliver declaration or a copy of his bill original; it must correspond in every particular with the entry of the plaint, or it may be set aside as irregular unless amended. (See form No. 8.)

If there are several defendants, and some only appear, judgment can be signed against those not appearing, and declaration delivered to those who have done so; see sec. 33, Common Law Procedure Act, 1852. The plaintiff, however, is not bound to proceed at any time unless defendant takes proceedings to force him on.

The copy declaration must be served upon each defendant if they appear personally, or upon each of their attornies, and several copies must be delivered when separate attornies appear. The plaintiff can either with it, or separately at another time, give a demand of plea, and the defendant need not plead until this is given; demand of plea may be en-

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dorsed on declaration or delivered separately; if the defendant do not give plea within four days exclusive of day of service, plaintiff can sign judgment for want of plea. The court has power to order interrogatories in the same manner as in the superior courts.

Particulars of Demand,

Where requisite, must be delivered with the declaration, if they can be comprised within three folios, and if not, the plaintiff must deliver such a statement of the nature of his claim as may be comprised within that limit; if they are not delivered, and on the application of defendant the court orders them, plaintiff will not be allowed any costs in respect thereof, or of obtaining such order—a copy of these particulars must be annexed to the record at the time it is entered for trial.

If the plaintiff has erred in the particulars set out on the foot of the plaint, and whether particulars be afterwards delivered, obtained by order or not, differing from them, if plaintiff pays on delivery of the particulars, he will not be called upon to pay more than the costs of plaint and service, for if they had been correctly stated thereon, he might have paid at once. The rules as to pleading and demurring are substantially the same as those formerly in vogue in the superior courts, and ss. 49-57, 60-71, 74-80, 87-89, 91, 96, 143-5 of the Common Law Procedure Act, 1852, are applied to this court. Formerly a count called the count *sur concessit solvere*, was very generally used, see form No. 8, and a very loose construction was given to it, but as it has now no greater virtue than the count in *indebitatus assumpsit*, there seems no reason for its preservation, and it will probably fall into disuse; it has had the singular honour of being the subject of the only rule which has been made by the

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authority of the court, a rule which has had the effect to confine its operation within reasonable limits. There is, however, one point in difference which is ·es r·ble to notice; according to this rule the plea never indebted, unlike the practice in the superior courts, under rule of Trinity Term, 1853, is admissible in actions upon a bill of exchange and is to be held to deny the drawing, making, endorsing and accepting thereof, but not other defences, which must be specially pleaded. Why this count should possess this peculiar virtue, and why it should be preserved at all, for it probably was the offspring of a mistake, it is difficult to see.

Either party demurring may give to the opposite party a notice to join in demurrer in four days, which may be delivered separately or endorsed on the demurrer: otherwise judgment. That part of the plea demurred to only shall be entered in the demurrer book; no costs for any other portion will be allowed either as between party and party or attorney and client. The signature of counsel is not required to any pleading or bill of complaint. See sections of Common Law Procedure Act, applicable: see also sec. 143 altered by order of Queen in Council.

Service of copy plaint without seal of court, or service of sealed copy out of jurisdiction without leave, is irregular; but it must be objected to within the time allowed for appearance; but if an appearance be entered by defendant on a plaint so served, the irregularity is cured.

Plea.

The defendant is not bound to plead until served with a demand, which may either be endorsed on the declaration or served separately, see form No. 9. It is a four days' demand, exclusive of day of service, and when the last day to plead falls

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on a Sunday or holiday, the defendant has the whole of the following day. He can withdraw his plea (see Form No. 20).

If the defendant plead to the jurisdiction, as he can only do when the amount is over £50, he cannot plead any other plea, and he thereby admits the cause of action; but, if he fail in his plea, an amendment may be allowed so as to raise the real defence to the action.

The plea to the jurisdiction must negative the facts which give jurisdiction, and the affidavit must verify the truth of it.

The affidavit can be made by the defendant or any other person (see form No. 10). If it is annexed to the plea it need not be enrolled in the cause; if not annexed it must be so enrolled; it need not be sworn before the day on which the declaration is delivered. If there is no or an insufficient affidavit with the plea plaintiff may sign judgment. It must be pleaded within the four days after the delivery of the declaration irrespective of the demand to plead, and it must be pleaded in person. If the plaintiff does not desire to take issue on the plea he may amend his bill, and in that case he can reply without entering a Cassetur Billa, see form, and then each party will pay his own costs.

If defendant do not plead within four days the plaintiff may sign judgment for want of plea, see form No. 21, but time for pleading may be obtained; the notice of application for such time should be returnable before the time to plead has expired, as the mere notice is not a stay of proceedings; therefore if through accident the time to plead will expire before the return of the notice of application for time, leave should be asked *exparte* to allow it to be returnable at ten o'clock, and this should, if granted, be stated in the notice. A defendant has the same time to plead after delivery of particulars under an order which he had at the return of the

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notice for particulars, unless otherwise provided for in such order. The leave granted should, of course, be clearly stated on the order, and the court will, if necessary, as in the superior courts, put the defendant under terms as to notice of trial. The time for pleading in bar or in abatement is four days.

If the defendant plead to the jurisdiction plaintiff may add similiter, giving notice to the defendant that he has joined issue; no time is limited for giving this notice. Further time to plead may be obtained on application.

Replication.

If the defendant's attorney demand replication plaintiff must reply or demur, or the defendant obtains judgment for want of prosecution. Demand of replication may be made before time for pleading is lapsed, and time for reply may be obtained if necessary.

If no replication is demanded, plaintiff may set the cause down for trial, and give notice of his having done so, or he may join issue, and give notice of having done so; no time is limited for giving this notice.

Every plea must be dated the day of delivery, and signed by the party or his attorney, with his address, if not, the plaintiff may sign judgment, but he may waive the objection by giving notice of trial, joining issue, etc.

If he signs judgment without pointing out the defect to defendant, he proceeds at his peril, no costs of setting judgment aside will, in such case, be allowed; but, otherwise, if there is ground for supposing that the plea is only used to gain time. Defendant cannot withdraw plea without consent of plaintiff, unless by order of the court.

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Set-off.

Defendant must deliver particulars with every plea of set-off, and if they are ordered, at the request of the plaintiff, no costs will be allowed for them; and, if the time within which they are to be delivered expires, defendant cannot use them at the trial, ss. 20 and 21 Common Law Procedure Act, 1860, apply. Equitable defence, ss. 83-86 Common Law Procedure Act, 1854, apply. Payment and set-off must be pleaded specially. No leave is required to plead several matters, but a plaintiff may apply to strike out objectionable pleas. A party may, with leave, plead and demur at the same time.

Paying Money into Court.

A single defendant in all actions except for assault, false imprisonment, libel, slander, malicious arrest or prosecution, crim. con. or seduction, can pay money without a rule for that purpose, but when one of several does so a rule must be obtained. The Registrar receives the money and marks a receipt for it in the margin of the plea, and pays it out on demand. If the money is paid in upon the whole demand, the plaintiff can accept the same in full satisfaction, and tax his costs of suit, and in case of nonpayment forty-eight hours after so doing he can sign judgment for such costs, including costs of such signing.

If, however, the plaintiff will not accept the amount paid in, he can reply that the same is not sufficient to satisfy his claim, and the defendant, if the issue be found for him, will then be entitled to his costs of the suit, after the delivery of the replication.

If the money is paid into court only as to part, and the plaintiff accepts it in full, he should reply accepting as to such

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part, and *nolle prosequi* as to the remainder, he will then have his costs on payment into court, and pay the defendant on the *nolle prosequi*, or he may accept the money on the counts on which it is paid in and reply to the other pleas, though in such case he cannot tax his costs on the issue disposed of till the determination of the suit, or he can proceed to trial on the pleas generally, replying that the amount is not sufficient to satisfy his claim, and also replying to the other pleas.

If defendant succeeds he is entitled to costs after replication, and in other pleas costs commencing with instructions for pleas.

If money is paid in to credit of a cause, as money paid in lieu of bail, etc., application must be made to transfer such part as may be necessary as paid in with the pleas; when there are several actions which are consolidated, and money is paid in generally, and plaintiff proceeds on one and fails, he will still be entitled to costs on the other up to the time of paying money into court.

The practice as to notice to admit and admission of documents is the same as in the superior courts, ss. 117 and 118, Common Law Procedure Act, 1852.

Notices to produce are also the same, s. 48, Common Law Procedure Act, 1845.

The Record.

The pleadings having determined whether by joinder in issue or not the record is made up, and the pleadings, etc., are engrossed on parchment.

Different records may, by order of the court, be made when different causes of action are joined. The record being made up, the plaintiff may set the cause down for hearing at any time appointed thereafter for the trial of causes, see

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form No. 14, and he must thereupon forward notice of trial to the other side, such notice being considered equivalent to a notice of joinder in issue, see form No. 15. The defendant can set the cause down by proviso ten days after issue joined, or after a court day has elapsed, or if plaintiff had set it down and then countermanded.

If both plaintiff and defendant set down the cause for trial at the same court day, or when the defendant has set it down by proviso, the defendant's attorney must give four days' notice to the plaintiff's attorney to bring on the record to the presiding officer, or no costs will be allowed of making up the record.

If plaintiff's attorney do not lodge record within two days, exclusive of day of trial, defendant can make up record and will be entitled to costs, if he wins.

The notice must be not more than twelve or less than eight days, exclusive of the day of trial, so that the party setting down for trial must watch the sittings of the court. Notice must be given for the first day of the sitting. If the last day for giving the eight days' notice falls on a Sunday the notice must be given on the Saturday, when plaintiff is under term short notice of trial is four days, exclusive of day of trial.

Where terms are such notice as the plaintiff can give, and notice is sent, a countermand can be given of such notice on the morning of the day appointed for trial, without incurring the costs of the day.

When defendant is under terms to take short notice of trial, it should be entered at least eight days before the day of trial, although the parties are not at issue, otherwise it can only be entered with leave, and at an additional expense. This practice seems loose, but it is that given by Mr. Brandon. No particular form of notice is neces-

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sary, but it must be given to each party to be affected by it.

Certain days, usually once a month, are appointed for the trial of causes, and a list of causes is open to inspection, but cases may be entered by leave after list is made up. A cause list of the cases to be tried on every day of the sitting is posted in the office of the court on the previous day.

No fresh notice of trial is necessary when the case has been made a remanet, or when it is postponed by order of the court

If plaintiff does not appear the cause is struck out, and defendant is entitled to the costs of the day. If defendant does not appear the cause is taken as undefended.

Either party may countermand notice of trial three clear days prior to the day of hearing, or if short notice is given, not less than the second day before the day of trial, exclusive of that day, or if less notice, on the morning of the day of trial. If the day of giving notice falls on a Sunday, it may be given the day before. The same rules apply when there is no jury.

If the cause is set down for proviso, and also by plaintiff, countermand is a nullity.

If record is withdrawn after the time allowed for countermand, the party doing so must pay costs of the day.

The cause will not be tried if record is not deposited, together with a copy of the particulars of demand annexed to it, the second day before the day for which notice is given.

The same procedure is followed when issues of law, demurrer, special verdict, etc., are set down for argument.

Points of demurrer must be delivered to the opposite party

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four days before the day of argument: in the case of cross demurrers the party demurring first begins.

Sittings of the Court.

The list is called over, if plaintiff does not answer the case is struck out, if defendant does not do so it is taken as undefended, unless it is set down per proviso; if this arises from mere mistake the court will restore the case on terms, or the plaintiff must apply for a new trial. If costs ordered to be paid are unpaid cause will be struck out.

The proceedings on the trial are identical with those of the other superior courts, ss. 20-27 and 89, Common Law Procedure Act, 1854. If the plaintiff does not appear an order for costs of the day may be obtained on application to the court on notice.

If case struck out before setting it down a second time party must pay costs incurred by his default, or the case may be struck out; under very special circumstances time may be given for the payment thereof. If a special verdict is returned by the jury on the trial, and the parties cannot agree to the terms, the Judge will settle it, and if necessary it may be set down for argument as an ordinary issue.

Issues of facts may be tried without a jury by the Judge if the parties consent in writing, but it is said that in such a case his finding shall not be questioned.

When a special case is agreed upon or ordered the Registrar transmits it to the Rule Department of the Master's Office of the High Court of Justice.

New Trials.

In proof of the superiority of this court, and in accordance with the practice of the superior courts, and upon pre-

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cisely the same principles, and subject to the same restrictions and disabilities, the Mayor's Court has always been in the habit of granting new trials upon the merits, when rendered necessary. If the Judge be sitting, a motion for the purpose may be made at once, and if the party is not present, after giving notice of intention to make such application, a rule absolute may be granted in the first instance, or an *exparte* application may be made for a rule *nisi*, and at the same time execution stayed. If the Judge is not sitting, the Registrar has the power, if he thinks it a fitting case, to stay execution, to enable the parties to make application at the next court, or some special day to be named for the purpose, ss. 31, 33-35, Common Law Procedure Act, 1854.

If a new trial is granted without mention of costs, such costs are not allowed the party successful on the second trial.

If defendants withdraw plea judgment is signed.

If the defendant has appeared, and the plaintiff neglects to proceed with any step, the day following the defendant may make a four days' demand, and if this is not complied with, he may sign judgment for want of prosecution. The docket will be so made out, and the record must show the default complained of; the defendant may then proceed to tax and issue execution.

Either party may apply at the trial for leave to move former trial, etc.; but if such application be made afterwards it must be made promptly.

In the case of *Folkard* v. *Metropolitan Railway* (29 L. T. N. S. 101) it was held that five days was too long a period after the trial within which to give leave to move, and that such leave, though it need not be given at the trial itself, must be given very shortly afterwards.

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Discontinuance.

The plaintiff may at any time, and whether the defendant has or has not been served, withdraw the action by filing a withdrawal (form 23), or he may discontinue by rule, and he will have no costs to pay if notice of either of these steps is served on the defendant before appearance, if afterwards, on payment of the costs, which, if not paid, may be recovered by the defendant by his making up record and issuing execution thereon. If under £20 the costs are 15s. 8d., above that sum 19s. 2d.; if demand of declaration has been given 3s. under, and 4s. above £20, is to be added, such costs to be paid within one day from the taxation, or defendant may make up the record and sign judgment and immediately issue execution thereupon. The costs of judgment, when the amount is under £20, are 9s. 6d., above that sum 15s. 8d., without notice of taxation, and execution may issue immediately; upon signing judgment the original rule must be annexed to the judgment docket. The order is obtained *exparte,* upon application by a *precipe* (form 24).

Rule to stay on terms,

May be obtained at any time, even before appearance, as when the plaintiff is willing to take debts by instalments. If defendant has appeared it is sufficient to obtain his consent, and the terms in case of default, and upon filing that in the Registrar's office a rule will be granted upon the terms of the consent (see form 25). The amount of costs may also, of course, be agreed upon. If default is made and judgment is signed, execution may issue; if not, judgment should be signed for defendant under rule (form 26), and the original rule annexed to the judgment docket, when execution may issue.

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If defendant tenders a less sum than is claimed in the plaint, together with costs, and the plaintiff accepts such sum, or if defendant on notice applies for an order to stay proceedings on payment of such sum, the court, if it thinks that the demand was too large, will only order the bare costs of the action. If the offer is refused, the application and offer is marked by the Registrar, and if, on the money being paid into court, the plaintiff subsequently accepts it, defendant is entitled to his costs incurred subsequently thereto, which he may set-off against the costs to which the plaintiff is entitled, or deduct from the sum paid into court.

If plaintiff do not attend, order to stay may be obtained on affidavit of service of notice.

The party who substantially succeeds at the trial is entitled to have the record and enter the postea, and the practice accords with that of the superior courts.

The record need not be fully entered up before judgment is signed; this is done by filing a docket (form No. 7). As to costs, see post page 99. No person is entitled to issue execution, even if judgment is signed, or the costs taxed, until the time for appeal has expired. Then, in the case of verdict over £20, is two days.

If the leave of the court to move under 10th section of this Act has not been obtained by either party, the party obtaining the verdict may the same day give notice of taxation of costs for the following day, and on that day tax his costs and sign judgment, but he cannot issue execution until the following day unless with leave of the court, which may be obtained the same day as the taxation.

If the verdict exceeds £20, although the other party had two days for appeal, the successful party may tax and proceed to judgment; and, if no appeal, he may issue execution the third day.

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The court or the Registrar will, if any just reason exists, stay execution to enable the other side to appeal (see writ of execution, form No. 18).

The Bills of Exchange Act, 1855, see form No. 34, except ss. 8, 9, and 10, is applied to the Mayor's Court; the proceedings are similar in all respects to those in the other courts, except the notice, which must be in the form No. 34.

Defendant has twelve days inclusive of the day of service within which to appear; service must be personal or by order if substituted service is necessary, see form No. 34, for judgment record in default of appearance.

The court has exclusive jurisdiction in ejectment, see form No. 36, formerly just the same as the superior courts, and now as described in the Common Law Procedure Act, 1852. The sections applicable are 168-221 inclusive, the 93 section of the Act of 1854, and ss. 1, 2 and 3 of the Act of 1860. If defendant do not appear plaintiff may have judgment without producing any evidence.

The sections 34, 35, 36, 37, 38 and 39 of the Common Law Procedure Act, 1852, as to joinder and nonjoinder, and misjoinder of parties applies, s. 40 of the same Act, as to joinder of the claims of husband and wife, and ss. 19, 20 and 21, of the Act 1860, as to joinder of all persons supposed to be legally entitled.

As to death, marriage, or bankruptcy of parties, ss. 135-142, of Act of 1852; 161-167 in error, and in ejectment, ss. 190-199; and see s. 92 of Act of 1854, to compel continuance or abandonment of action in the case of death of any party.

The rules and practice as to arbitration are precisely similar in all respects to those in the superior courts. Compul-

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sory reference may be had under the s. 94 of the Common Law Procedure Act, 1852, and ss. 3-17 of Common Law Procedure Act, 1854; and see 14 & 15 Vic. c. 99, s. 16, and 3 & 4 Wil. IV. c. 42, s. 39-41.

Inquiry as to damages, when judgment has gone by default, may be directed to take place before the Registrar.

In cases of *scire facias*, see Common Law Procedure Act, 1854, ss. 128-134. Writ of execution may be amended; it must be endorsed with full name of the party issuing it; it may be sued out by a different attorney without any order for change of attorneys. If interest is required, the date from which it is required must be endorsed at the rate of four per cent, unless by agreement a larger amount is recoverable.

The party entitled to execution may levy poundage, fees, and expenses of the execution, beyond the sum recovered and costs. Writs of *ca. sa.* and *fi. fa.* might be issued at the same time, but see the new Act for abolition of arrest. Counsel have exclusive audience in court, and they as well as attorneys are subject to the same rules and regulations as in the superior courts. There is a roll which attornies can sign on payment of a fee of 5*s.*; if an attorney attempts to practise before he is on the roll his proceedings may be set aside, or at any rate stayed until he shall have duly signed it.

In the taxation of a bill, if retainer is admitted, the matter is referred to the Registrar, who acts in the same manner as does the master in the superior courts. Judgment may be signed four days after taxation; or if nothing is found due, defendant can sign judgment for his costs. If retainer is disputed trial can be confined to that issue; in that case plaintiff is entitled to judgment the day after taxa-

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tion. Defendant can review taxation, except in cases of compensation under the Railway Acts, when the Registrar's determination is final.

A view may be obtained, see s. 14 of the Common Law Procedure Act, 1852, and an order for inspection under s. 58 of the Act of 1854.

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THE 20 & 21 VICTORIA, CAP. 157 (LOCAL).

THE

MAYOR'S COURT OF LONDON PROCEDURE ACT.

An Act for abolishing certain Jurisdiction of the Sheriffs' Courts of the City of London, and for amending the Process, Practice, and Mode of Pleading in the Mayor's Court, and for extending the Jurisdiction thereof.

Whereas there exists in the City of London, certain courts of law, called respectively the Sheriffs' Court of the Poultrey Compter, and the Sheriffs' Court of the Giltspur Street Compter: and whereas it is expedient that certain functions and jurisdiction of the said Sheriffs' Court should be abolished: and whereas it is expedient to make the Mayor's Court more efficient by extending its powers and simplifying its practice and mode of procedure: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say).

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Commencement of Act.

1. This Act shall commence and come into operation on the first day of October, 1875.

Short Title.

2. In citing this Act in other Acts of Parliament and in legal instruments and other proceedings it shall be sufficient to use the expression "The Mayor's Court of London Procedure Act, 1875."

No Action or Suit to be brought in Sheriffs' Court, except in certain cases.

3. From and after the commencement of this Act no action or suit for the recovery of any debt or demand shall be commenced in the Sheriffs' Court either of the Poultry Compter or of the Giltspur Street Compter, save only and except pleas of personal actions under the provisions of the London (City) Small Debts Act, 1852, which may continue to be brought as heretofore in the Sheriffs' Court, without being entitled as of either Compter; provided always, that nothing in this Act contained shall be deemed or construed to take away or diminish the power or authority of the Sheriffs of London or either of them to execute any writ of inquiry or other writ or mandate which may be directed to them by any court of competent authority, or by any Judge or officer thereof, or by any person lawfully authorised to issue the same, or any writ of trial which may be directed to them or either of them under or by virtue of the provisions of

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the Act of 3 & 4 Will. IV. c. 42, nor take away or diminish any other power or authority which the Sheriffs of London or either of them can have or hath or can or may lawfully exercise by Act of Parliament, charter, act of common council, custom, prescription, or otherwise howsoever.

The party who substantially succeeds at the trial is entitled to have the record and enter the *postea*, the practice upon which is similar to that of the other superior courts.

The record need not be fully made up before judgment is signed, which is done by filing in the office a docket (form 16), and it is then marked on the record.

The Registrar enters the judgment according to the circumstances of the case.

In Error from the Mayor's Court, the Exchequer Chamber, and not the Court of St. Martin's-le-Grand, to be the Court of Error.

4. And whereas it is expedient to facilitate the proceedings in error on matters arising in the Mayor's Court: therefore from and after the commencement of this Act, no petition shall be presented to or received by the Lord High Chancellor for any writ of error to review any proceedings in the Mayor's Court, nor shall any writ of error be issued thereout to review any such proceeding, nor shall any writ or other proceeding be issued to the Court of Saint Martin's-le-Grand for any purpose as a court of error to review any proceeding of the Mayor's Court, but in all cases of error arising on proceedings in the Mayor's Court the Exchequer Chamber shall be the court of error for the purposes of this Act, and all mat-

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ters in errors shall be proceeded with according to the rules to be framed for that purpose as is herein-after expressed.

This section, giving to the suitor in the Mayor's Court a resort to the same court of error as is open to the suitors in the superior courts, seems to place them upon a footing of perfect equality, in effect, to raise or reduce this court to the level of an ordinary court of *Nisi prius* or court of first instance.

An attempt was made to treat this court as an inferior court, by setting down an appeal from its decision in the Court of Appeal from Inferior Courts, in the case of *Le Blanche* v. *Reuter's Telegram Coy.* 2 R. 1 ex Div. 408; but Walker Williams, Q. C. for the defendant pointed out that proceedings in error from this Court lay to the Court of Exchequer Chamber, and that by sec. 18, sub sec. 4, of the Supreme Judicature Act, 1873, the jurisdiction and powers of the Court of Exchequer Chamber were vested in the Court of Appeal. Counsel for the Plaintiff contended that this was an inferior court: but the court held the contrary, thus once more establishing a difference between this court and the Civic Courts of other cities.

Special Case may be stated for opinion of court, or of courts of common law.

5. The parties in any action or foreign attachment may, after issue joined, by consent, and by the order of the court, state the facts of the case in the form of a special case for the opinion of the court, or of any one of the superior courts, and may agree that judgment shall be entered thereon for the plaintiff, garnishee, or defendant, as the court or such superior court may think fit.

See Common Law Procedure Act, 1852, ss. 46-48. And without pleadings, ss. 42-45 of same Act. For the practice in these cases, see practice of the superior courts.

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Special Cases to be transmitted by the Registrar to rule department of the Master's office of superior court.

6. When the opinion of such superior court shall be required, the Registrar of the Mayor's Court shall transmit such special case, under the seal of the court, to the rule department of the Master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the said superior court as are usual with reference to cases stated for the opinion of such a superior court in actions therein pending.

Registrar to enter Judgment upon production of office copy rule.

7. The Registrar of the court, upon the production of an office copy of the rule of the superior court, made upon hearing the said special case, shall enter judgment in the court in conformity with the decision of the superior court.

Appeal from Mayor's Court to superior courts at Westminster. Security to be given if court so direct.

8. If either party appearing on the trial of any cause in which the sum sought to be recovered shall exceed the sum of twenty pounds, shall be dissatisfied with the determination or direction of the court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same, to any one of the superior courts (two or more of the puisne Judges or Barons thereof shall sit out of term as a court of appeal for that

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purpose); provided, that such party shall, within two days after such determination or direction, give notice of appeal to the other party or his attorney, and also give security within such time or times as the court shall direct, to be approved of by the Registrar of the court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed: Provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge of the court shall have ordered the party appealing to pay the amount of such judgment into the hands of the Registrar, and the same shall have been paid accordingly; and the said court of appeal may either order a new trial on such terms as it shall think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such court may think proper, and such orders shall be final.

Application may be made to the Judge, if sitting, or to the Registrar, to fix a time within which security may be given. If on the part of the plaintiff, then it will be for costs of appeal only: if on the part of defendant, it will also include the amount of the judgment and costs; but if these amounts be ordered to be paid into court, then the application will be for costs of appeal only.

If the appellant does not apply for such order, the respondent can do so.

The ordinary amount ordered has been £50, but this will vary according to the nature of the case. It may either be paid into court, or secured by a bond, to the satisfaction of the Registrar, if the security is not given within the time fixed by the order, the opposite party can proceed to execution.

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This section is an encroachment upon the dignity of the Mayor's Court. Nothing tends to shew the greatness and dignity of this court more clearly than the fact, that until this Act of Parliament encroached upon its ancient rights, there was no appeal from the decisions of the Lord Mayor. In the language of the charter of King Henry I., no Justices should be appointed who should sit in judgment upon him whom the citizens of London chose to honour.

Appeal to be in form of Case.

9. Such appeal shall be in the form of a case agreed on by both parties or their attorneys, and if they cannot agree, the Judge of the court, upon being applied to by them or their attorneys, shall settle the case and sign it, and such case shall be transmitted by the Registrar to the rule department of the Master's office of the court in which the appeal is to be brought.

Rules to set aside or enter verdict, etc., may be moved before any of the courts at Westminster, if Mayor's Court shall grant leave.

10. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the superior courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such superior court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such superior court, for a rule to show cause why such verdict

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or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action, which court is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same court shall think proper; and in case such court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same or any office copy thereof to the Registrar of the said court, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the court, in like manner as if no trial had been had therein; or in case the court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same or an office copy thereof to the Registrar, be at liberty to proceed in any such action as if no such rule nisi had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly.

See ss. 41-51, Common Law Procedure Act, 1854.

Under section 4 of this Act there is a power of tendering a Bill of Exceptions; it must be, as in the superior courts, directed to the Court of Exchequer Chamber.

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Plaintiff recovering not exceeding £5 in Action of Contract and 40s. in Action for a wrong, to have no costs, unless Judge at trial certify to entitle plaintiff to costs, or the court make an order for the plaintiff to have costs.

11. If in any action in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding five pounds, or if in any action in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding forty shillings, the plaintiff shall have judgment to recover such sum only, and no costs, unless the Judge before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him that there was a sufficient reason for bringing the said action in the court, and in such case the plaintiff shall have judgment to recover his costs of suit; or if when there is no verdict the plaintiff shall make it appear to the satisfaction of the court, on summons, that there was a sufficient reason for bringing the said action in the court, in case the court may by rule or order direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have judgment to recover his costs accordingly.

By Common Law Procedure Act, 1860 and 1854, sec. 34, Judge may deprive a plaintiff of costs in actions of tort under £5. Costs in the court below, on removal of a cause, are costs in the cause. *Franks* v. *Wicks*, 9 Dowl. 489. *Pearin* v. *West*, 5 W. & M., 291 3 A. & E., 405. And see ss. 43-48 of Common Law Procedure Act, 1852, for costs of agreement of parties in actions of abortive

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issue, ibid, sec. 145. New Trial, ibid, sec. 44. Examination of witnesses, ibid, sec. 57. Attachment of debts, ibid, sec. 67.

Security for costs can be obtained, in all cases where it can be so obtained in the superior courts. Application may be made on notice, and security be given in like manner as in the superior courts, by deposit of the money, or on approved security, to the satisfaction of the Registrar. An undertaking by the plaintiff's attorney is sufficient, if satisfactory to the Registrar. If by bond, notice of the names and addresses of the proposed sureties must be given to the opposite party, and if no objection is made, within two days after day of notice, the bond is completed. If notice be given, the matter is determined by the Registrar, who gives an appointment for the purpose.

The application for security must, in ordinary cases, be made before issue joined.

Housekeepers paying rates and taxes, may make an affidavit as to their responsibility.

Where debt does not exceed £50, no Pleas to Jurisdiction allowed in certain cases herein stated.

12. Where the debt or damage claimed in any action shall not exceed the sum of fifty pounds, no plea to the jurisdiction shall be allowed, provided the defendant or one of the defendants shall dwell or carry on business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on business at some time within six months next before the time of the action brought, or if the cause of action, either wholly or in part, arose therein.

See observations as to the effect of this section, at page vii.

It does not appear that it is necessary that either party should reside in the city, or even carry on business there, nor according to the Master of the Rolls, that any part of the cause of action

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should have arisen in the city if the parties are agreed in their desire to sue in this court.

Court may order that the Plaint may be served in any part of England or Wales.

13. The court may, if it shall think fit, in any case when it shall satisfactorily appear by affidavit that the cause of action arises within the jurisdiction of the court, order that the plaint may be served in any part of England or Wales; and the service of any plaint in pursuance of such order shall be as valid and effectual as if the same had been served within the jurisdiction of the court, provided that a copy of such order shall be served at the time of the service of the plaint.

And see also, Common Law Procedure Act, 1852, by which further powers are granted.

All further Proceedings to be had as usual.

14. In all cases where an order of the court shall be made under the last preceding section, all the proceedings in the cause shall be had and taken as if the defendant had been duly served with the plaint within the jurisdiction.

Objection to Jurisdiction to be by Plea.

15. No defendant shall be permitted to object to the jurisdiction of the court in or by any proceeding whatsoever, except by plea.

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A plea to the jurisdiction, admits cause of action; but no doubt the court would allow plea to be amended, in case of failure of the plea, on payment of costs.

As in the superior courts, the plea must be pleaded in person, within four days after delivery of declaration, irrespective of the demand of plea.

In the case of *Manning* v. *Farquharson*, 30 L.J.N.S., Q.B., 22, a rule nisi for a prohibition was obtained, to prevent the Lord Mayor, etc., from proceeding in an action, no part of which arose within their jurisdiction, and in which they had attached moneys in the hands of a third person, also resident out of the jurisdiction. It was argued that the above section was a mere rule of pleading in that court, and that it did not prevent the Court of Queen's Bench from issuing prohibition: but Crompton, J., who sat alone in the Bail Court, held that assuming this to be an inferior court, the old law as to there being no jurisdiction unless the matter arose within the limits of the jurisdiction of the inferior court, was altered, and that this section, in effect, gave jurisdiction to this court whenever it chose to assume it, or rather whenever any person chose to sue in it.

And Mr. Justice Crompton went further, and held that this section took away the power of any of the superior courts to issue writ of prohibition on this ground.

This case was cited by Sir Fitzroy Kelly, in his argument, in *Cox* v. *Mayor of London*, but without any attention, as it appears from the report, having been paid to it. The counsel for the defendants did not even notice it; and Mr. Justice Willes, in delivering the judgment of the Judges, declared that this judgment required no criticism, because it did not affect the garnishee. The Lord Chief Baron Pollock, no doubt, with this case in his memory, in delivering the judgment of the Court of Exchequer, in *Cox's* case, expressly declared that they did not over-rule any former decision; and on appeal to the Exchequer Chamber, Mr. Justice Crompton, who delivered the opinion of the whole court, including that of Mr. Justice Willes, expressly declared that the whole court approved of his decision in *Manning* v. *Farquharson*, "where it was held that the City court cannot be stopped by prohibition

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from trying the case as between the plaintiff and defendant, in the court below, if the defendant chooses to have it tried there, and does not plead the want of jurisdiction, according to the provisions of this statute."

This view must therefore be held to be sound law, and at any rate this important consequence flows from it, that any parties by mutual consent, can use this court although neither of them reside within its jurisdiction, and no part of the cause of action arises within it.

The view expressed in the text has at length been established by the Master of the Rolls in the case of *Chambers* v. *Green*, 20 L. R. Eq. 555, where he expressly over-ruled the case of *Worthington* v. *Jefferies*, 10 L.R.C.P. 383, which had decided directly the contrary, the Court (Brett, Grove, and Denman, J.J. Keating concurring) having in that case held that if the superior court was clear in fact and in law that the inferior court (it being assumed wrongly that the Mayor's Court was an inferior court) was acting in excess of its jurisdiction, or without jurisdiction it could not rightly refuse to enforce public order in the administration of the law by refusing any stranger either to issue a writ of prohibition or to put the plaintiff to declare in prohibition; in that case a stranger had intervened to inform the mind of the court, the party being clearly unable to do so by reason of the statute, and perhaps equally unwilling.

The Master of the Rolls in commenting upon it stated "there is the recent case of *Worthington* v. *Jeffries*, where it appears to have been held that the court is bound to prohibit. I elect to follow an opinion which appears to be in accordance with common sense, and lays down the rule that when both parties to the action wish the inferior court to decide it a stranger should not as a matter of course prevent it.

In *Ellis* v. *Fleming*, L. R., C.P.D. 239., Mr. Justice Brett retorting upon the Master of the Rolls said "it is true that in *Chambers* v. *Green*, L.R. 20, Eq. 552 the Master of the Rolls expressed his dissent from the view of this court in *Worthington* v. *Jeffries*, (L. R. 10, C.P. 379). But, notwithstanding the respect which we all feel to be due to everything that falls from that eminent Judge, I

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do not think that that dictum at all derogates from the authority of *Worthington* v. *Jeffries*, in this case it was held that it is competent for the plaintiff to abandon such part of the cause of action as arose outside its jurisdiction. And in a subsequent case the same judge asserted that in his view the decision of *Worthington* v. *Jeffries*, did not at all conflict with the decision of the Master of the Rolls in *Jacobs* v. *Brett*.

The effect of the decision in *Cox's* case, is, that if the defendant objects to the jurisdiction by plea, and in spite of his remonstrance, the court chooses to retain the suit, he can get prohibition; but assuming the soundness of the proposition that this section gives the court jurisdiction to try any case, no matter where it arose, and between what parties, it is very difficult to understand by what part of the Act that power is taken away. It seems absurd and illogical to say that the Act gives the court jurisdiction to declare that it has no such jurisdiction or no jurisdiction. It, in effect, says to the court, no court is superior to you, in so far as it shall have power to ascertain whether you have correctly obtained seizin of a case before you. Yours is the court to determine that question. No court snall interfere whilst you make it, but your determination shall go for nothing after it is made.

The obvious effect of the statute is, to take away the right of the courts to prohibit in any case whatever; and this case of *Manning's*, although upheld in the decision in *Cox's* case, in fact is over-ruled by it, or over-rules it. The case of *Hawes* v. *Pavely* L.R., C.P. Div. is an authority for this proposition, and this case practically oves-rules the decision in the cases of *Gold* v. *Turner*, L.R. 10 C.P. 149 in which the Lord Chief Justice Coleridge held that to entitle a Plaintiff to sue in the Mayor's Court, the whole of the cause of action must have arisen within the jurisdiction of that court. On the same principle were decided the cases of *Robinson* v. *Emanuel*, *Quartly* v. *Tummins* and *Tapp* v. *Jones*, all in L.R. 9 C.P., *Worth* v. *Austen*, L.R. 10 C.P. 689, *Cooke* v. *Gill*, L.R. 8 C.P. 117, *Whinney* v. *Schmidt*, ibid, 118. *Baker* v. *Clark*, ibid, 121, in which case the defendant was refused a rule, but it was granted to a stranger the following day—also the case of the *Banque de Credit Commercial* v. *De Gas Lazard* (*Garnishee*) (L.R. 6 C.P. 142) and nu-

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merous others of the kind. In *Cook* v. *Gill* Mr. Justice Keating founded his judgment on the fact that "beyond question the Mayor's Court was a court of inferior jurisdiction," his judgment being now over-ruled so is his proposition—and therefore this court—is now fairly established to be a superior court—a superior court in the sense that as no other court, except by the enactment of this statute has any control over it, and except so far as its own boundaries limit it, it has sole and supreme authority within its limits. The City is in fact a kingdom within a kingdom, and it does not pretend except by virtue of this Act to exercise any jurisdiction beyond it.

Evans v. *Nicolson* (32 L.T., N.S., 778) was followed by *Taylor* v. *Nicholls* (L.R., C.P.D. 244) the decision in which confirmed it, although the court was much pressed with the fact that the subsequent day to that when was given the decision in *Evans* v. *Nicholson*, they decided the case of *Wallace* v. *Allen* (32 L.T.,N.S., 830 442 L.J (C.P.) 351) directly contrary to it. Mr. Justice Archibald seemed to think that *Taylor* v. *Nicholls* harmonized the two cases; but with the greatest deference to the deceased judge it is simply impossible to reconcile them.

In *Exparte Isaacs Re De Vecchi*, L.R. 6 Chy. 62 the Court of Appeal refused to restrain this court when an attachment had been made prior to the filing a petition by one of the defendants against whom the attachment had been made.

The costs of a rule applying for prohibition are in the discretion of the court—although there are no pleadings; see *Exparte The Overseers of the Township of Everton* (L.R. 6 C.P., 245), and *Wallace* v. *Allen* (L.R. 10 C.P. 607) and may be ordered to be paid by the attornies themselves. In *Gold* v. *Turner*, ibid, 151, Lord Coleridge said that the reason the court usually made the attornies pay costs was, that some attornies, deliberately setting themselves against the decision of the court for their own profit, and not with a view to the interests of their clients, have persisted in sueing in the Mayor's Court in respect of causes of action which were wholly out of the jurisdiction of the court—a course which the Master of the Rolls now holds to be legal.

In the case of *Evans* v. *Nicolson*, No. 2 L.T.R, although at the

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suggestion of Lord Coleridge himself the rule was moved for without costs, the learned judge stating that counsel must be aware that the court would discharge the rule if it could, yet even there, Lord Coleridge ordered the attorney (the stranger) to pay costs personally.

The rule in the case of *Evans* v. *Nicolson*, No. 2, was discharged, but upon a ground which did not affect the principle here contended for, indeed it was admitted by the court that it must have been made absolute, but for an accident: it appeared that a letter was posted out of the jurisdiction, but received within the city, and contrary to the well known rule of law, it was held that this constituted a statement of accounts within the city, the decision was however reversed on the following day and again on the 30th of November, 1875.

In *Taylor* v. *Jones* L.R. 4 C.P. Div. 8, the court (Coleridge, C. J., Archibald, J., and Amphlett, B.) held the contrary of the decision in *Evans* v. *Nicolson*, No. 2, that is that a letter speaks from the place where it was posted and not where it was received, and refused prohibition, the letter having been posted within the City of London, and the same decision was arrived at by Mr. Justice Lush, in a case which occurred at Chambers, nevertheless the practice of sending letters from within the jurisdiction to persons residing out of it has extended so considerably that it is calculated that at least 700 writs are issued from this court weekly in consequence of the decision in the case of *Evans* v. *Nicolson*, No. 2. The author succeeded very recently in a case at Westminster in establishing the proposition that a mere verbal promise to pay a debt, if given within the city, constituted a sufficient cause of action, although neither party resided, or carried on business within it, and although no part of the cause of action arose within it, (this case is not reported at present).

So that, in point of fact, this court in this respect holds a higher position than either the Court of Common Pleas or Exchequer, both of which are subject to the power of prohibition by the Court of Queen's Bench.

No plea to the jurisdiction is allowed in cases under £50. In all cases under £50, which come within the 12th section of this

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Act, and in those cases without, of course the court can deal with them in the same way as in the cases of a higher amount.

Mr. Justice Willes, without disapproving, doubts whether the attention of the legislature was called to what he styles the "indirect" effect of this section, as defined by Mr. Justice Crompton; surely the effect is direct enough, and if it were not so, it is immaterial.

It is very difficult to see, with the learned judge, how *Manning's* case can be immaterial to the decision in *Cox's* case. It does not go quite so far, because the latter case was the act of the garnishee, and in the former that of the same defendant, curiously enough: but in the former case, Messrs. Cox (also the garnishees) had actually appeared, although the defendant had put in no appearance. So that in fact they were equally interested, and this difficulty arises, how can a garnishee raise a defence of which the defendant does not choose to avail himself. The plaintiff would be entitled to judgment for want of appearance, and it might be dangerous for the garnishee to defend. Surely it cannot be contended that it is lawful for the garnishee to do that which the defendant cannot do.

Causes under £50 not to be removed except by Judge's order or on security.

16. No cause depending in the Mayor's Court in which the debt or damages sought to be recovered shall not exceed fifty pounds shall be removed by any defendant before judgment therein into any superior court, except in pursuance of a Judge's order as herein-after mentioned, unless the defendant, with two sufficient sureties, such as the Mayor's Court shall allow, shall first be bound to the plaintiff in the cause by recognizance, to be acknowledged in the Mayor's Court, in a sufficient sum for the payment of the debt or damages and costs in case judgment shall pass against the defendant in the

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superior court, or in case the cause shall be brought back by precedendo in the Mayor's Court. Provided always, that any Judge of any of the Superior Courts may in the exercise of his discretion order a writ of certiorari to issue to remove any such cause depending in the Mayor's Court into any superior court without such recognizance as aforesaid, and such cause may be removed into such superior court accordingly.

If cause is removed, it is necessary to direct the writ to the Mayor and Aldermen, as Judges of the Mayor's Court, and it is made returnable, whether in or out of term. (Form 27). If a Judge's order is necessary, summons must be taken out in one of the superior courts. If obtained, it must be filed at the writ office upon sealing the writ, and a copy of the order is left with the certiorari at the Registrar's office. It then acts as a stay of proceedings. The Registrar gives notice to the plaintiff, and prepares the return to the writ, which the defendant's attorney must apply for and file.

If cause to be removed, is one where debt or damages sought to be recovered does not exceed £50, and no Judge's order for the removal has been obtained, notice of the defendant's intention to remove, must be given to the plaintiff. (Form 28.) This notice must contain the names of two persons, housekeepers, and specify the time of their attendance at the office of the court, which must be between the hours of 12 and 2 o'clock, and must be given to the plaintiff's attorney two days before-hand, to enable him to make enquiries. If he is dissatisfied, the bail must justify before the Registrar, and if allowed, they must, with defendant, enter into the recognizances to pay the debt and costs, in case judgment shall pass against the defendant, or the cause be brought back by precendo. (Form 29.)

If the plaintiff does not attend within half an hour of the time appointed, the Registrar, on being satisfied by affidavit of service, will take the required recognizances, and make a return to the writ accordingly, and it is then filed. The defendant should then appear, or he may be compelled by a rule for procedendo, unless he appears within four days.

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If there are several defendants, an appearance must be entered for all, otherwise a procedendo may be obtained. (*Kent* v. *Goldstein*, 7 B. & C., 525. *Jameson* v. *Schonscour*, 1 Dowl., 175.)

If writ has been issued, when it would not lie, or it is bad for some informality, it may be quashed by the court or a Judge, and a procedendo awarded. If it has not been returned, a supersedeas will be awarded in such cases.

Whatever bail the plaintiff is entitled to in the Mayor's Court, he is entitled to it upon removal, so that in case of attachment, special bail in dissolution can be required, and if it is dissolved, and then removed, the defendant must put in special bail, though he be an executor. (*Day* v. *Paupiere*, 13 Q.B., 802.) (*Tassie* v. *Kennedy*, 5 D. & L., 587.) When special bail was not put in. (*Scarrott* v. *Price*, 1 Dowl., N.S., 333.)

When cause is removed, the proceedings are simply those of the court into which it has been removed, and the rules of the Mayor's Court do not apply. (*Davis* v. *James*, 1 T.R., 372.)

The plaintiff can declare in different forms of action, if it be for the same cause. (*Gunn* v. *Machin*, 1 *Wils.*, 277. *Bowerbank* v. *Walker*, 2 Chitty, 519.) It must not be for a larger amount. (*Wyatt* v. *Evans*, 3 Salk., 55.)

If a cause is removed, over which the court into which it is removed has no jurisdiction, which may often be the case in the Mayor's Court, a return must be made of the special matter, which must be supported by affidavit to instruct the mind of the court.

In the case of *McHenry* v. *Davies*, L.R. 6 Eq., 462, defendant had paid a sum of £80 into the Mayor's Court, in an action by plaintiff in which he had been non-suited, he then filed a writ on the Equity side of the Mayor's Court which defendant removed by certiorari into the Court of Chancery; plaintiff then petitioned that court to have the £80 standing in the Mayor's Court paid into it, but the court refused, but money standing to the credit of the cause removed was ordered to be transferred to the Chancery Court. *Tray* v. *Open Stock Exchange*, L.R. 11 Eq. 556, and in that case it appearing upon the Bill itself that some of the parties were resident out of the jurisdiction of the Mayor's Court, Malins V.C., on an exparte motion ordered it to be retained, and see *Shand* v. *De Bocise*, L.R. 18 Eq., 283.

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If the defendant does not comply with the rules of the court into which the action is removed, the plaintiff may obtain a procedendo.

After a cause has been remanded, it cannot afterwards be removed before final judgment. (21 Just., c. 23, s. 3. *Laws* v. *Hutchinson*, 3 Dowling, 506. *Dixon* v. *Hislop*, 5 T.R., 365. *Glynn* v. *Hutchinson*, 3 Dow. 529.

Writ to remove causes to be lodged within one month after Service of Plaint.

17. No cause depending in the Mayor's Court shall be removed before judgment therein into any superior court, unless the writ removing such cause shall have been lodged with the proper officer of the court within one month after the service of the plaint, or unless such writ shall have been lodged with such officer before such action shall have been entered for trial according to the practice of the Mayor's Court.

Foreign Attachment not to be removed after set down for Trial, except by express directions of Judge upon Terms.

18. No foreign attachment shall be removed from the Mayor's Court at any time after the same shall be set down for trial except by the express order of one of the Judges of the superior courts, and then upon such terms as to costs, bail, or payment of money into court as such Judge on summons shall think fit; provided that a summons only, without any order of the Judge thereon, shall not stay the trial of the attachment in the Mayor's Court.

The law of Foreign attachment is a large subject, and is fully

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dealt with in several text books, especially in the able and elaborate work of Mr. Brandon, to which the practitioner is referred for further information on this point. It is proposed here, simply to give such an outline, that the practitioner may see whether his is a case in which it is applicable.

The citizens of London had, by charters, the privilege that all their debtors should pay them in London, or else discharge themselves in London, that they owe none; and upon this right it is said that it was determined that if a citizen to whom a debt was owing, could find property belonging to some other person, resident within a town wherein he knew his debtor to be, such citizen might attach the property so found, in London, although not his debtor's, in order to compel the governing body of the town wherein such debtor was resident, to enforce the appearance of the debtor in London, to answer the demand of such citizen.

In *Cook* v. *Gill*, L.R. 8 C.P. 111, it was stated by Keating, J., that the late Mr. Justice Willes had left a MS. note that in order to give the Court Jurisdiction, both the cause of action must arise and the garnishee reside within the city—an opinion quite opposed to the true practise—based upon the old fallacy of this being an inferior court.

This power, if it ever existed, must have ceased at a very early period, but this qualification was engrafted on the practice, and it is still the law that if the person so found with property within the city, is himself a debtor of the debtor of the citizen, that property can be attached, and possessed by the citizen; and now this right can be exercised by any one having a right to sue within the city, and it would seem that this is now the privilege of any one, whether a resident or not, and it would almost seem, according to the decision in *Manning* v. *Farquharson*, when even the cause of action did not arise within the city; of course, if the property found, belonged to the original debtor, no matter in whose hands it was discovered, it might be seized.

The practice was,—in the first instance to summon the debtor, which was done by entering a complaint in the Mayor or Sheriffs' Court, and the serjeant was directed to summons or call the defendant. This was done orally; if he did not appear he was solemnly

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called in open court, and then his default was recorded. The creditor then alleged that some person held property, and that person was warned by the serjeant not to part with it without the order of the court.

The serjeant then returned in open court, that he had attached the defendant, and the defendant was then called on four successive days.

If the debtor appeared, he was at once arrested, till he gave bail.

If he did not appear, the person holding the property, was summoned to shew cause why the plaintiff should not have it, and up to that time all property coming into his possession, waseq u ally included in the order.

If the garnishee admitted the property to be that of the defendant, or it was proved to be his, it then became the property of the plaintiff.

The whole of this process appeared, and still appears, upon the record, but the greater part of it is now mere fiction ; and in fact the garnishee puts in a plea, and a record is made up and the issue tried, as in an ordinary action. Every one is liable to be garnishee, whether citizen or not. Every one who is not a citizen, is styled a foreigner, whether he be so or not, and hence the term applied to this process.

The whole of the matters recited in the record, are now so recited as occuring at the same time, and immediately the action is entered; and the plaintiff making an affidavit of his debt, is at liberty to issue the attachment, and he is then warned, after which he cannot part with the goods, unless they be of a perishable nature, or it be for the benefit of the owner that he do so. The goods so attached cannot be taken under a fi. fa., except subject to the attachment. Of course, the plaintiff only gains against the garnishee the same rights as the defendant possesses. The question of the plaintiff's rights against the defendant, do not come in issue ; the latter is supposed to be protected by the oath and pledges of the former. It is not necessary to give notice to the defendant, but of course, the garnishee is responsible to the defendant, if he admits too much, or deals unfairly with his rights.

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If garnishee is guilty of any laches, he loses priority, if any other creditor attaches the same property.

If plaintiff obtains a verdict, he must give responsible pledges to restore, if his rights are disproved in a year and a day, before he can get execution. If defendant chooses to appear at any time before execution, he can demand declaration, and dispute the claims of the plaintiff, in the common form of action.

If property attached is not the property of the defendant, the true owner can proceed by Bill of Proof, to recover it.

If the property attached, be money or goods earmarked, the garnishee can deal as he pleases with other property in his hands, belonging to the defendant.

The plaintiff is not bound to proceed, except at his own risk, and he may take any other proceedings at the same time. No costs are allowed on either side, but the plaintiff is entitled to costs of the action against defendant, if he succeeds, and so is the defendant, if he is successful.

Very nice questions of law arise, upon what property is attachable, especially with regard to securities for money, shares, &c. Certain stocks, and funds are exempted by statute. And by 33 & 34 Vic., c. 30, no order for the attachment of the wages of any servant, labourer or workman, shall be made.

The bankruptcy of the debtor disposes of plaintiff's attachment. Debts in suit in the superior courts, sums recovered by defendant from garnishee before they are paid over are not attachable, nor is money due from a client to his attorney for costs on the Master's allocatur, nor money paid into any court or in the sheriff's hands, nor money ordered by an arbitrator to be paid over, until so paid, nor equitable demands—see *Cross* v. *Robinson*, L.R. 3 C.P. 264, where it was held that a prior equitable assignment of Railway Shares in the hands of a garnishee did not pass although no notice of such assignment had been given to the garnishee,—including even legacies, nor property subject to a contingency, nor any claims sounding in damages; in fact it must be such property that defendant could sue the garnishee, as for property held to his use, or for which he is liable to account; and therefore property in the hands of a trespasser is not attachable, nor even money in

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the hands of a banker, paid to him by his country agent, before the defendant or the banker had acknowledged the money to be that of the defendant.

If more than one person is in possession, all must be added as parties.

If the garnishee has a technical defence to the action, as against the defendant, he need not set it up, if he have a mind to assist the plaintiff, so that in this way it is said the statute of limitations may be avoided.

The effect of the order is to release the garnishee to the extent of the property handed over, from all liability to account to the defendant; and it is said that even promissory notes, or bills given by him on the goods, are void in the hands of defendant, though of course not in the hands of third parties, without notice. All liens, even though only equitable, held upon the property, are of course good as against plaintiff, but a banker who has discounted bills of the defendant, which are dishonoured after judgment in attachment, has no lien on the produce of these bills, placed to debtor's credit. If the garnishee claims a lien the plaintiff may take issue upon it.

If defendant is solely interested in certain property, it cannot be attached on account of a debt in which he is only jointly interested, nor can property in which he is jointly interested, be attached for his sole debt.

The delivery of the goods to the garnishee, must be perfect. A creditor retains his right to stop, in transitu; and the goods must be lawfully the property of the defendant. If obtained by him by fraud, they are not attachable. If the defendant be dead, proceedings can be taken against his representatives.

It was held by the late Mr. Justice Willes (Mr. Justice Kealing assenting) in the case of *Frith* v. *Guppy*, L.R. 2 C.P. 32, that where an attachment issued from the Mayor's Court pending an action in the Common Pleas for the same cause of action the plaintiff should be put to his election as to which action he should continue, and that the other should be stayed: the ground of the decision being that such double procedure was unfounded and

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vexatious. The only evidence of this consisted in the fact that in the mind of the learned Judge the plaintiff would not succeed in the action in the Mayor's Court, because the cause of action arose out of the jurisdiction, and indeed out of the kingdom, and the judgment was based upon the authority of *Cox* v. *The Mayor of London* then under the consideration of the House of Lords. It is obvious that there are two very grave objections to the authority of this decision; it is extremely inconvenient if indeed it is possible to try a case on an argument of this kind, and to ascertain in the absence of all evidence whether any case exists, and secondly by the authority of *Cox's* case having been much over-rated, if it is not expressly over-ruled, besides that it is opposed to the authority of the old cases of *Leuknor* v. *Huntley*, Cro. Eliz. 693, 712. *Druton* v. *Maitland*, 15, L.J., Q.B., 332. *Garbett* v. *Adams*, ibid, and *Turbill's* case, 1 Wms. Saunds 67, b. n (h). *Wood* v. *Thompson* 3 Taunt, 851, 1 Marsh 395.

In the case of the *Bank de Credit Commercial* v. *De Gas Lazard* (*Garnishee*) 24 L.T.N.S. 235) Garnishee obtained prohibition on the ground that the court had no jurisdiction to try the case.

In the case of *Mayor* v. *Cannot* (Wilson, Garnishee) 24 L.T.,N.S. 583), it was held that the Court had no power to attach goods beyond the limits of the City, even though the person in possession of them resided within the City. In giving judgment, Justice Brett said "the pretensions of the Mayor's Court seem reduced to an absurdity by the admission that the Court assumes to attach goods at Liverpool and even in Australia.

Bovil, C. J., said, "it is an essential part of all inferior jurisdiction that their power does not extend beyond their local limits."

Byrne and others v. *The Guano Consignment Coy.* Defendants, Thompson, Bonar and Coy. (Garnishees), 25 L.T.N.S, 935, prohibition issued because the cause of action partly arose out of the City, although payment of the freight was to have been made in the City.

Mr. Justice Willes repeated his argument that this was an inferior court and that therefore the whole cause of action must have arose within the City.

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No Cause to be removed into Superior Court except by leave of Judge, and upon certain terms.

19. No cause depending in the court shall, before judgment be recovered, be removable into any of the superior courts (after plea pleaded), unless by leave of a Judge of one of the said superior courts in cases which shall appear to such Judge fit to be tried in one of the superior courts, and upon such terms, if any, as to payment of costs, giving security for debt and costs, or damages and costs, or such other terms as he shall think fit, upon summons.

No Suit on equity side of Court to be removed unless by special direction of Judge.

20. No suit commenced on the equity side of the Mayor's Court shall be removed out of the said court into Chancery without the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice Chancellors, upon application for that purpose made; and no cause shall be so removed from out of the said equity side of the Mayor's Court if the Judge to whom such application shall be made shall consider that the matter in question in the said suit is fit to be tried in the Mayor's Court; and the said Master of the Rolls shall have power from time to time to make rules and regulations respecting the removal of such suits as aforesaid.

Power of Court to compel parties to allow inspection of documents, and also copies to be taken.

21. In any action or other legal proceeding in the

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court, the court may, on application made for such purpose by either party, compel the opposite party to allow the party making the application to inspect all documents in the custody or power or under the control of such opposite party relating to such action or other legal proceeding, and if necessary to take examined copies of the same, or to procure the same to be duly stamped in all cases in which, previous to the passing of this act, a discovery might have been obtained by filing a bill, or by any other proceeding in a court of equity, at the instance of the party so making application as aforesaid to the court.

Power to the Judge within the jurisdiction, to hear and determine motions, etc.

22. The Judge of the court may at any time, within the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *non obstante vere-dicto*, or for a repleader, or for granting new trials, and for entering nonsuits and verdicts in causes pending in the court.

In the cases of *Reg* v. *Lord Mayor of London* and *Re Roux* v. *Martin* (27 L.T.,N.S. 61) the question of the right of the Mayor's Court to grant new trials was gravely discussed, it was admitted by the Judges that the court had always in practice granted new trials when it saw right to do so, and this section confirmed the right in the strongest manner; but the fact of a court having such a right is conclusive of its not being an inferior court. Blackburn, J. could not see how an inferior court could acquire the power, it could not be acquired by immemorial custom, and the learned Judge could not see how it could be acquired by mere usage; it did not occur to the mind of the learned Judge that all these

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difficulties would vanish if they could but learn that this is a superior court.

The Mayor's Court had jurisdiction over attaints given to it by 27 Hy. 7, c. 21, s. 8.

The origin of new Trials is traced in *Bright* v. *Egan*, 1 Burn 390, Barrington on the statutes, p. 86, Slade's Case, Style's 138. *Wood* v. *Gunter*, ibid, 462-6, Reeves, Stat., vol. 3, p. 304.

Power to Court to amend errors.

23. It shall be lawful for the court at all times to amend all defects and errors in any proceeding, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made; and all such amendments may be made with or without costs, or upon such terms as to the court may seem fit.

And see also sec. 96, of Common Law Procedure Act, 1854, and sec. 36 of the Act of 1860.

Whenever a Plaintiff shall amend pleadings, after notice by the defendant, or a plea in abatement of a non-joinder, he must file a consent in writing, of the person or persons whose name or names are to be added, together with an affidavit of the hand-writing; and give notice thereof to the defendant, unless the filing of such consent be dispensed with, by order of the court.

Depositions of witnesses may be taken.

24. The court may in any action, upon the application of any of the parties thereto, order the examination on oath, upon interrogatories or otherwise, before the

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registrar or other person or persons to be named in such order, of any witness or witnesses in any part of England and Wales, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of examination, and all other matters and circumstances connected with such examination as may appear reasonable and just.

See Common Law Procedure Act, 1854, ss. 46, 47, 51, 55-7. And see ss. 20, 48 and 49, as to unwilling witnesses. By virtue of the Equitable jurisdiction, this court always permitted depositions to be taken inperpetuam rei memoriam, whether there was a suit or not; and now the court is strengthened by the provisions of the Common Law Procedure Act, 1854.

Affidavits may be made before the Lord Mayor, or any one of the Aldermen, the Recorder, and the Registrar or his depnty. It may be made before any magistrate or officer who has general power to administer oaths, and if he signs the jurat and affix his seal of office, it is sufficient. If he have no such seal, his signature must be verified in the Mayor's Court by affidavit. Affidavits made before Common Law or Chancery Commissioners are not sufficient.

Affidavits may be made in Foreign countries, before a judge, and an affidavit stating the authority of such judge, his office, and a verification of his signature, is necessary; or before an ordinary magistrate, when it must be attested by a notary public or by any member of a British legation, consul, or vice-consul, exercising his functions abroad; and if the affidavit is made before any such person, and his seal of office is attached, no verification is necessary in addition to the true place of abode of the person.

As to compelling attendances of Witnesses, Production of documents, etc.

25. When any such order shall be made, the court may, in and by the first or any subsequent order, com-

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mand the attendance of any person to be named in such order for the purpose of being examined, or the production of any writing or other document to be mentioned in such order, and may direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the party at whose instance such order may have been made and issued shall have all the same remedies against such person, in case of non-attendance, as he would have against any person for non-attendance in obedience to any writ of subpœna ad testificandum duly served according to the practice of the court: Provided that, in addition to the service of the order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be so served, together with, or after the service of such order; Provided also, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial: Provided also, that no person shall be compelled to produce under any such order any writing or other document that he would not be compellable to produce at a trial of the cause.

See Common Law Procedure Act, 1854, ss. 46-47.

And as to inspection of property, see Common Law Procedure Act, 1852, ss. 58 and 59.

Commission may be issued by Judge of the Court to examine witnesses abroad.

26. Upon the application of any of the parties to an

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action depending in the court, the court may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

See form 10 App.

The application should be supported by affidavits, as in the other Superior courts. The commission must be signed and sealed in the registry.

If the examination is to be viva voce, the practice is, for counsel to prepare and sign interrogatories, a copy of which is duly served upon the opposite party, who may in the same way draw up cross interrogatories; or the questions may be reserved till the examition. The interrogatories must be annexed to the commission.

Examination of Prisoners.

27. Any Sheriff, Gaoler, or other officer having the custody of any prisoner, may take such prisoner for examination at the place or places named in any such order, by virtue of a writ of habeas corpus to be issued for that purpose, which writ shall and may be issued by any Judge under such circumstances, and in such manner as such Judge may, now by law, issue the writ, commonly called a writ of habeas corpus ad testificandum.

Examination of Witnesses to be taken upon oath.

28. The person or persons authorized to take the

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examination of witnesses by any such rule, order, writ, or commission as herein-mentioned, shall and may take all such examinations upon the oath of the witnesses, to be administered by the person so authorized; and if upon such oath any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county where such evidence shall be given, or in the county of Middlesex, if the evidence be given out of England.

All depositions taken under any rule of court, are to be returned, and filed in the registry. See

The Person appointed for taking examinations may report to the court.

29. The registrar, or any other person named in any such rule or order, to take any examination in pursuance thereof may, and he is hereby required to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness, or other person thereon or relating thereto; and the court is hereby authorized to intsitute such proceedings, and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of court.

Costs of order and proceedings.

30. The costs of every rule or order to be made for the examination of witnesses by virtue of the provisions herein contained, and of the proceedings thereupon, shall

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be costs in the cause, unless otherwise directed, either by the Judge of the superior court making such order, or by the court.

Restrictions as to reading Depositions.

31. No examination or deposition to be taken by virtue of the provisions herein contained shall be read in evidence without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is not in England or Wales, or is dead, or unable from permanent sickness, or other permanent infirmity to attend the trial, in all or any of which cases the examinations and depositions, certified under the hand of the Commissioner, Registrar, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Interpleader by defendant in action.

32. Upon application made by or on behalf of any defendant in any action in the court, such application being made after declaration and before plea, by affidavit or otherwise, shewing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court, or to pay or dispose of the subject matter of

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the action in such a manner as the court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim, which summons may be served upon such third party in any part of England or Wales, and upon such summons the court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attorney, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein as to costs, and all other matters as may appear to be just and reasonable.

When two actions are pending, application must be made in each. (*Allen* v. *Gelboy*, 3 Dowl., 143.) And see Common Law Procedure Act, 1860, ss. 12-18. 1854, s. 51. (*White* v. *Watts*, 31 L. G. C. P., 381.) And s. 34, allowing appeal in motions. (*Whotton* v. *Parker*, 4 H. & N., 324.)

A copy of the summons must be served upon the plaintiff or his attorney.

The affidavit in support of the application should be entitled in the original cause, and made by the defendant or some other party shewing facts to bring the case within the act: it should set out the fact that the plaintiff has declared that the defendant has not yet pleaded.

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Judgment and Decision final.

33. The judgment in any such action or issue as may be decreed by the court, and the decision of the court in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Claim of party not appearing barred.

34. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

For relief of Serjeant-at-Mace in execution of process against goods.

35. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the court, or to or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-

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Mace or any of his officers, made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-Mace or any of his officers, to issue a summons calling before the court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of the superior courts, or in any local or inferior court of record, in respect of such claim, shall be stayed; and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said court shall thereupon exercise, for the adjustments of such claim, and the relief and protection of the said Serjeant-at-Mace or any of his officers, all or any of the powers and authorities herein-before contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

See Common Law Procedure Act, 1860, ss. 12—18; 7 & 8 Vic., cap. 96, s. 68; and see Prentice's Chitty's Archbold, title Interpleader.

The Serjeant-at-Mace, or his deputy, by the order in Council of 1863, exercises all the duties exerciseable by the Sheriff or Bailiff under the several Acts applied by that order to the Mayor's Court.

Rules to return writs may be obtained, but unless a formal return is required, the practice usually adopted, when any question arises relating to the proceedings of the Serjeant, is to give him notice of an application to the court.

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Creditor obtaining judgment or order in respect of debt not exceeding £20 may summon the debtor before the court. Debtor or creditor may be examined.

36. In every case where judgment shall have been signed in the court against any person for any debt not exceeding twenty pounds, exclusive of costs, or where any person shall be indebted to any other in a sum not exceeding twenty pounds, by virtue of any judgment or order for the payment thereof, or by virtue of any order for the payment of any costs, the court shall, upon the application of the creditor by any petition or note in writing according to the form in schedule (A.) to this act annexed, grant a summons, according to the form in schedule (B.) to this act annexed, which said summons may be served upon the said debtor where he may reside or be; and if the debtor appear according to such summons, or at any adjournment thereof, he shall be interrogated, if the creditor think fit, touching the manner and time of his contracting his debt, the means or prospect of payment he then had, the property or means of payment he still hath or may have, and the disposal he may have made of any property since contracting such debt; and such creditor shall also be examined, if the court or debtor shall think fit, touching his claim against such debtor; and it shall be lawful for the court, then or at any future sitting of the court, to make an order on the said debtor for the payment of his debt by instalments or otherwise; and in case the debtor shall not attend as required by the said summons or at any adjournment thereof, and shall not allege a sufficient excuse for not attending, or shall if attending refuse to

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disclose his property or his transactions respecting the same, or respecting the contracting of the debt, or shall not make answer thereof to the satisfaction of the court, or shall appear to the court to have been guilty of fraud in contracting the debt, or of having wilfully contracted it without reasonable prospect of being able to pay it, or of having concealed or made away with his property in order to defeat his creditors, or having made any vexatious defence to any action for the recovery of the debt, or if he appear to have the means of paying the same at the time of hearing, and shall not pay the same if the court shall so order, or shall not pay the same by instalments at such time as the court shall order, or as the court shall have ordered, and without any further summons thereon, it shall be lawful for the court to order such debtor to be committed for any time not exceeding forty days to the debtor's prison within the City of London, which order of committal shall be according to one of the forms in Schedule (C.) to this act annexed.

Now, by the 32 and 33 Vic., cap. 62, except in cases under £50, no person shall be imprisoned for making default in payment of a sum of money, except in the case of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract, and except on default by a trustee, or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control, and in cases of default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order, but such imprisonment shall not be for a longer period than one year (sec. 4).

And with regard to imprisonment on account of small debts,

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this court is in the habit of committing any debtor for a period of not more than six weeks, or until payment, provided that it is not longer than one year, for default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of the court, and for the purposes of this section the court may direct debts to be paid by instalments, and may from time to time rescind or vary such order.

This jurisdiction can only be exercised when it is proved to the satisfaction of the court that the person making the default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just, and for the purpose of such proof the debtor and any witnesses may be summoned and examined upon oath according to the prescribed rules (sec. 5.)

In the case of *Walker* v. *Elliott*, L.R., 1 C.P. Div. 168, it was decided that the jurisdiction of the Mayor's Court under the Debtor's Act, 1869, is confined to cases in which the debtor is at the time of the issuing of the summons, resident or carrying on business within its limits, and also cases in which the Court could have had jurisdiction over the original cause of action ; but Mr. Justice Archibald, who alone gave judgment in this case, assumed throughout that this was an inferior court, so that the decision is subject to considerable qualification.

What rules these may be does not appear very clearly from the Act, probably it means the ordinary rules of the court in which the application is made. In this court there are no rules properly made.

Imprisonment under this act does not extinguish the debt, or interfere with any other remedy, or with execution against lands or goods.

The exercise of this power is limited, if this court is an inferior court, to cases not exceeding £50, as respects the judgments of a superior court of law or equity, but this limitation will not affect the judgments of this court, but only of those imported into it.

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If, however, as it is contended, this is a superior court, there is no limit to the amount of debt for non-payment of which a person may be committed.

It will depend upon the character of the court how this jurisdiction is to be exercised, if it is an inferior court, it can only be exercised by a Judge or his deputy in open court, and this would seem to be the proper practice, although, if the debtor be poor and honest, he may not be thankful for such publicity, and in that case would be glad to have this searching examination conducted in private. A Judge of the superior courts can exercise the power at chambers. Upon payment of the debt or instalment for which he is imprisoned a person can at once be discharged out of custody.

It is worthy of remark, that in this section the term superior court is not confined to those at Westminster, as it is in the next section. This may be from the fact that courts of equity are also mentioned; but it may be contended that it has a wider signification.

By sec. 29 this Act does not extend to or affect the custom of foreign attachment, or any proceeding in relation to such custom; but it was held by the Court of Q. B., in *Re Wilkins*, L R., 3 Q.B., 109, that the operation of the Act only extended up to judgment and did not apply after the plaintiff had brought the defendant within the jurisdiction of the court.

The following rules have been made by the court, but are of no binding authority:

RULES MADE BY THE COURT NOT IN PURSUANCE OF THE ACT.

Any judgment debtor may be summoned at the request of a judgment creditor, which request shall be in Form No.

The summons shall be in Form No.

The service of every summons, whenever it is practicable, shall be personal service; but if it appear to the judge or his deputy that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made

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as if personal service had been effected upon such terms as the judge or his deputy may think fit.

The order shall be in Form No.

The committal shall be in Form No.

Except by special leave of the judge or his deputy, no commitment for non-payment of any sum shall be issued without notice being given or sent to the debtor that such commitment has been ordered, but such notice need only be sent to the debtor by post or otherwise without personal service.

Proof of such notice having been sent may be made by affidavit, and such affidavit must set out the particulars of how and when such notice has been sent.

Proof of the means of the debtor may be made orally or by affidavit, or if it appear to the judge or his deputy, either before or at the hoaring, or any adjournment thereof, that a *vivâ voce* examination of the debtor or of any other person, or the production of any book or document, is expedient or necessary, an order may be made commanding the attendance of such person, or the production of such book or document. The disobedience to any such order shall be deemed a contempt of court, and punishable accordingly.

The hearing of any summons may be adjourned, if the judge or his deputy shall think fit, to a day and time to be named, and if the debtor shall have appeared on the day on which it is adjourned, no further notice thereof shall be required of such adjournment; but if the debtor shall not have appeared, then notice of such adjournment shall be sent to the debtor.

Upon every commitment shall appear the amount of the debt or the instalments due, and for the non-payment of which the debtor is committed.

Upon payment of the sum mentioned in the commitment, together with the fees of the court and Searjeant-at-Mace, the debtor shall be entitled to his discharge.

The Governor of the Debtors Prison may receive the sum mentioned in the commitment, together with the fees, as specified in these Rules, and thereupon, or upon certificate of the

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Serjeant-at-Mace or his deputy that the same has been satisfied, discharge the debtor.

No commitment shall be in force concurrently with a writ of *Fi. fa.* for the same debt.

The judgment record or order upon which the debtor is summoned shall be produced in court at the hearing of any summons.

The costs of the summons and commitment, and of any writ of *Fi. fa.* issued on the judgment, or of any previous summons or summonses, not served by reason of the debtor having evaded service, shall be in the discretion of the court, and ordered at the hearing of the case.

Any witness may be summoned to prove the means of the debtor, or for the production of any book or document, by a summons in the Form No.

Such summons shall be served three clear days before the hearing of the case.

The list of summonses will be called over at fifteen minutes after the time named, as the return of any summons or the time named as the adjournment of the same; and if, on a case being called on, the debtor does not appear it will be heard in his absence; and if the creditor does not appear it will be struck out.

The court will hear any summons in which the parties are ready at the time mentioned as the return of the same, or at the time mentioned as the adjournment thereof, notwithstanding that the fifteen minutes above mentioned may not have expired. Evidence of the service of any Summons may be given either in court orally or by affidavit.

When personal service has not been effected, no order to pay or commit will be made, unless it be approved in open court to the satisfaction of the judge or his deputy that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service; but when personal service has been effected, an affidavit of the service may be made at any time before the order to pay or commit is issued.

The order to pay is only required to be drawn up and served

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upon the debtor in case he fails personally to appear upon the hearing of the summons.

No commitment will be issued after the expiration of one calendar month from the time of the same being ordered, without leave of the court.

A commitment will only remain in force for six calendar months, and if not executed within that time it can only be renewed by leave of the court.

After an order of commitment has been made, if a creditor, or his attorney on his behalf, receive any money on account thereof, the commitment will not be executed by the Serjeant-at-Mace, unless such money has been received by leave of the court, or the court order such commitment to be executed, notwithstanding the receipt of such money.

The costs of any summons and hearing, and of the order or commitment, are in the discretion of the court, and must be applied for at the hearing of the case. In ordinary cases the following will be allowed where the debt, exclusive of all costs, is—

	Under £10.	£10 and under £20.	£20 and upwards.
Application for summons, and paid	—	2*s.* 6*d.*	2*s.* 6*d.*
Copy and service of summons.	2*s.* 6*d.*	2*s.* 6*d.*	2*s.* 6*d.*
Attending the hearing	3*s.* 4*d.*	3*s.* 4*d.*	6*s.* 8*d.*
Copy and service of order where debtor does not appear	1*s.* 0*d.*	3*s.* 0*d.*	4*s.* 0*d.*
If commitment ordered where debtor does not appear, notice of commitment and affidavit	2*s.* 0*d.*	4*s.* 0*d.*	5*s.* 0*d.*

Power to issue order for payment on committal or signing judgment.

37. It shall be lawful for every person who shall be

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entitled to sign judgment in the court where the amount of the debt recovered shall not exceed twenty pounds, exclusive of costs, to give, previously to signing such judgment, notice in the form of Schedule (D.) to this act annexed to the person against whom such judgment may be signed; and in case such notice shall be given, the court shall, upon judgment being signed, have the like powers of hearing the parties and making such order for payment on committal as in the cases hereinbefore mentioned.

Power for officer to take person on order of committal though out of jurisdiction of court.

38. When an order for commitment shall have been made under this act, and the person against whom such order of commitment shall have issued shall be out of the jurisdiction of the court, it shall be lawful for the officer charged with the execution of such order of commitment to take the person against whom such order shall have issued wherever such person shall reside or be.

Registrar to have power to grant orders for payment or committal.

39. In every case in which judgment shall have been obtained in the court, or order made, for a sum not exceeding twenty pounds exclusive of costs, it shall be lawful for the Registrar of the court, either during the sitting of the court or out of court, to hear the parties, and to grant an order for payment of the amount of

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the judgment or order and costs by instalments or otherwise, or to issue an order of committal as in the cases herein-before mentioned.

It is now competent for the Judge to order payment by instalments in cases of any amount, see Act for Abolition of Imprisonment for debt.

Court to frame table of fees and costs.

40. The court may from time to time frame a table of fees upon the proceedings in the before-mentioned cases, and make an order for payment thereof, in addition to the debt and costs already recovered.

Registrar of Mayor's court may hold courts.

41. The Registrar of the court may, in the absence of the judge, hold the court and transact all the business of the court, except the trial of issues in law or in fact.

The Registrar holds his court daily, and unless the Judge be sitting and it is matter in relation to the trial of any issue in the list, application may be made to the Registrar. In all interlocutory and collateral matters application in the first instance should be made to him, or costs may be refused.

Notice of application to the Registrar may be sent one day, if served before six o'clock p.m., for the next. The time for waiting after appointment is fifteen minutes. If notice does not require to be served personally it may be sent by post.

Any order made in a cause must be drawn up not later than the day following that on which it is made.

In addition to the powers conferred by custom, he has, by order in Council of 1863, all the powers, so far as regards matters and proceedings in this court, which are exercised by the Masters of

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the superior courts under any of the sections of the several Acts applied by that order to the Mayor's Court. It would seem to follow from this order that the practice of this court should be similar in these matters to the practice of the Superior Courts; it is to be feared that in very many small instances the practice differs without cause and is in apparent opposition to this order, as there is no authority except that of "Custom" in favour of any difference, the practitioner is recommended to follow the guide of the practice of the Superior Courts in all cases not otherwise provided for by the statute whatever the custom may be. It is to be regretted that the court has not exercised its powers under the section 45 of the Act with a view to assimilate the practice and pleading to that of the Superior Courts at Westminster, so far as is practicable and consistent with the provisions of this Act, although the old system of pleading may be preserved.

It is said that the Deputy Registrar has all the powers of the Registrar (Brandon's Points of Practice, p. 1), but there does not appear to be any authority for this dictum, unless it can be based upon the interpretation of terms to this Act—a very rash proposition. Recently the Registrar has been appointed Assistant Judge and a new Registrar appointed; there does not seem to be any authority for this appointment, except a loose statement in Mr. Brandon's book, that "it appears that formerly the Registrar had some qualified authority to sit in the Court as Judge before the Mayor's Court Procedure Act,"—page 1 of Notes of Practice—a very qualified authority certainly; and from this it would appear that the appointment is a nullity, and consequently that all the acts of the Assistant Judge are void.

Debtors' prison of City of London to be the prison of the court.

42. The debtors' prison for the City of London shall be the prison wherein all persons committed into custody under any process or proceeding of the Mayor's court shall be confined; and the keeper for the time being of the said debtors' prison shall and he is hereby

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required to receive and take into his custody every person who shall be committed or ordered to stand committed by the court; and in case the keeper of the said prison shall neglect or refuse to receive or take into his custody any person committed by the court, or shall before the expiration of the time for which any person shall be committed to his custody discharge such person out of his custody, and wilfully suffer such person to go at large, without a warrant or order for that purpose in writing, signed by the plaintiff or by the court (or by some other court of competent authority), such keeper so offending in either of the said cases shall pay to the plaintiff at whose suit such person was in custody respectively the debt or debt and costs for which such person shall have been committed to the custody of such keeper, and also any sum not exceeding twenty pounds at the discretion of the court.

The recent Act for the abolition of imprisonment would seem to make no difference to the power to be used by the Jailor, etc., of this court.

If Recorder is absent Common Serjeant may preside.

43. In the absence of the Recorder the Common Serjeant for the time being of the City of London may preside as judge in the Mayor's court, and in case of illness or unavoidable absence of either the said Recorder or Common Serjeant, it shall be lawful for them or either of them, or, in case of their inability to make such appointment, for the Mayor, Aldermen, and the Commons of the City of London in Common Council assembled, to appoint some other person who shall have

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practised as a barrister at law for at least seven years to act as a deputy of such judge in the said court during such illness or unavoidable absence; and it shall also be lawful for the said Recorder or Common Serjeant, or either of them, to appoint a deputy who shall have practised as a barrister for at least seven years, to act for either of them in the said court for any time or times not exceeding in the whole two months in any consecutive period of twelve months, and every deputy so appointed during the time for which he shall be so appointed shall have all the powers and privileges and perform all the duties of a judge of the said court.

Judge to administer oath to authenticate documents.

44. It shall be lawful for any judge of the Mayor's court, either in or out of court, to administer oaths and take declarations for the purpose of authenticating any documents which may be required to be produced in any foreign country or in any place out of the jurisdiction of the court.

Judge may make and alter rules to be confirmed by judges of superior courts.

45. It shall be lawful for the court from time to time to make, alter, and revoke rules, orders, and regulations required for and in respect of the offices of the Mayor's court, and the nature, duties, fees, and emoluments attaching to the respective officers, and from time to time to make, alter, and revoke rules for regulating the practice and pleading, and the taking of oral evi-

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dence in the court, and the fees to be taken on the proceedings in the said court, and the forms relating thereto, both in law and equity, as shall from time to time to it seem necessary and proper; Provided always, that such rules and forms, and any order for revoking or altering the same, shall be signed by the judge of the said court, and that no such rules, orders, or forms shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior courts; and it shall be lawful for the judges of the superior courts from time to make such rules, orders, and regulations as they may think fit for carrying into execution the provisions of this act relative to the removal of causes from the Mayor's court to the superior courts.

This section of the Act has been systematically disobeyed, and rules have been made from time to time which are duly entered in a book kept in the office without the authority here prescribed, and Mr. Brandon actually pretends to excuse the practice—see note to section 46—and at page 53 of his Notes of Practice he states that every court, having authority by custom or statute "to make "rules and orders, has an implied power by the grant to en- "force its orders by attachment." Instead of this court, having the grant of such a power by custom—if a custom can be styled a grant—the custom, if it had ever existed, is by this section expressly taken away; and it is obvious that, if this court makes rules in defiance of the statute, it can have no inherent power to enforce them—indeed it is difficult to say what acts are legal—certainly all the acts of the court, with regard to judgment summons, are wholly null and void, and any one imprisoned under them or aggrieved can at any time bring his action for damages. The author pointed out this fact in the first edition of this book, and it is curious that so far no one has attempted to question the acts of the court.

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Power to Her Majesty to direct provisions of any Act for amendment of the law, and rules framed in pursuance thereof, to apply to the Mayor's court.

46. It shall be lawful for Her Majesty from time to time, by an order in council, to direct that all or any part of the provisions of any act for the amendment of the law now passed, or hereafter to be passed, and also all or any of the rules and regulations made in pursuance thereof, shall extend to and apply to the Mayor's court, and within one month after such order shall have been made and published in the London Gazette such provisions and rules respectively, or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such order; and any such order may be in like manner altered and annulled; and in and by any such order Her Majesty may direct by whom any such powers or duties incident to the said provisions, applied under the said several acts and rules in respect thereof, shall and may be exercised with respect to the matters in such court, and may make any order, regulation, or form which may be deemed requisite for carrying into operation in such court the provision so applied.

Under this section, as will be seen by the order in Council, dated 17th day of November, 1863, a large number of the sections of the Common Law Procedure Act have been applied to this court; but so far none of the rules or regulations made in respect thereof have been applied, and as the authority to apply the rules made for the purposes of these sections is expressly given by this section, it is obvious that if not given they are not included; especially as

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it is declared by the previous section that all rules made by the Court itself must be allowed and confirmed by three Judges of the Superior Courts. Mr. Brandon argues (see Notes of Practice, page 6) that this latter section is repealed by the order in Council, which declares "that the Court had power to make and alter "rules and the forms of writs, and. proceedings without the ap- "proval of any of the Judges of the Superior Courts"—a proposition as absurd as it is erroneous—reference to the order itself will show that such power is only given to the Mayor's Court "so far as may apply to the said Court." That is so far as this Act will permit it; and certainly not when, as in section 45, it expressly forbids the making of rules so as to be of any force unless and until the Judges of the Superior Courts have allowed and confirmed them; to argue othewise is to contend that an Act of Parliament has less weight than an order in Council, or that an Act may be repealed by an order; a proposition which in these days can hardly be raised without a smile; still, incredible as it may appear, this is the construction which the Judges of this Court have put upon the order, and the consequence is, that the majority of the acts of this court are null and void, for want of due authority, and the Judges are liable to have actions brought against them by the score.

Power to Judge to direct attachment to be tried in Mayor's court.

47. In any case where a garnishee may appear before a judge under the "Common Law Procedure Act, 1854," and dispute his liability, the judge may order that an issue shall be tried in the said Mayor's court in such manner and form as the judge shall direct, and such proceedings shall be had therein as if the same question had been tried in the superior courts.

For removal of judgments into superior court.

48. In every case where final judgment shall have

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been obtained in the Mayor's court, and also in every case where any rule or order shall have been made by the court, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, any writ of execution upon such judgment, or any rule or order so made by the court, shall be sealed by the sealer of writs of any of the superior courts upon a precipe of the same being lodged with him, together with an affidavit verifying the judgment or order, and that the same remains unreversed and unsatisfied, and immediately thereupon such writ of execution, and such judgment, rule, or order, shall become and be of the same force, charge, and effect as a writ of execution or judgment revovered in or a rule or order made by such superior court, and all the reasonable costs and charges attendant upon such sealing shall be recovered in like manner as if the same were part of such judgment or rule or order: Provided always, that no such judgment or rule or order when so removed as aforesaid shall affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment, rule, or order of the Mayor's court unless and until a writ of execution thereon shall be actually put into the hands of the Sheriff or other officer appointed to execute the same.

If it is desired to remove the record, it is entered up and signed by the Registrar, or by his deputy, as in case of order of the court the order is signed; affidavit is then made (see form 30), a præcipe is filled up (see form 31), which are taken to the writ office and filed, and the judge's order, etc., is sealed. See Affidavit of Service, form No. 33.

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The plaintiff or defendant may then act upon it as upon an order, etc., of the superior courts; as to this see 19 Geo. III. c. 70, s. 4.

In the case of *Bridge* v. *Branch*, L.R. 1, C. P.D. 633, it was held that it was competent for the court to which a judgment had been removed to set it aside if the Court was satisfied that it was obtained in a matter over which the inferior court had no jurisdiction; a decision of but little value, since it is based on the old fallacy that this is an inferior court.

Fines on jurors for non-attendance.

49. If any juror having been duly summoned shall not attend in pursuance of such summons, or after his appearance shall wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every juror so making default, unless some reasonable excuse shall be proved to the satisfaction of the court, as the court shall think meet, not exceeding five pounds; and in case of non-payment of such fine according to the directions of the court, the same may be levied in such manner as is provided for the levying of fines imposed upon common jurors for any similar default under the provisions of 5 and 6 William IV. cap. 76, sec. 121.

Every issue of fact, unless otherwise ordered, is tried by jury, and the parties have the same option, under the same restrictions as exists in the superior courts, to have either a special or a common jury. The jury is chosen from the same persons who are liable to serve in any court of Nisi Prius, or Oyer and Terminer, to be holden in the City of London.

The special jury is struck by the Serjeant-at-Mace. The Judge at the trial can grant or withhold his certificate for a special jury, as in the superior courts.

A view may be obtained under sec. 14, C. & P.A. 52.

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Court may issue process to compel the attendance of witnesses although not within its jurisdiction.

50. If in any action or suit now or at any time hereafter depending in the court it shall appear to the court, or, if the court is not sitting, to the Judge thereof, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the court, it shall be lawful for the court or Judge, if in their or his discretion it shall seem so fit, to order that a writ called a writ of subpœna ad testificandum, or of subpœna duces tecum, or warrant of citation, shall issue in special form, commanding such witness to attend such trial or process wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be valid and effectual.

This writ is a Queen's writ, and does not differ in any way from the form of writ issuing from any other of the superior courts, and the practice attending it is similar.

It is not in practice issued before issue joined without leave, which may be obtained on application to the court or Registrar.

Judge may by consent try questions of fact.

51. The parties in any cause may, by consent in writing signed by them or by their respective attorneys, leave the decision of any issue of fact to the court, provided that the court shall in their or his discretion think fit to allow such trial, or provided the Judges of the superior courts shall, in pursuance of the power vested in them by law for such purpose, make any general rule or order dispensing with such allowance, either in

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all cases or in any particular class or classes of cases to be defined by such rule or order; and such issue of fact may thereupon be tried and determined, and damages awarded where necessary, in open court, by the Judge who might otherwise have presided at the trial thereof by jury; and the verdict of such Judge shall be of the same effect as the verdict of a jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial as to the power of the court or judge, the evidence, and otherwise, shall be the same as in the case of trial by jury.

See common Law Procedure Act, 1852, ss. 80 and 81.
See common Law Procedure Act, 1854, sec. 1.

No cause to be removed except by certiorari or Judge's order.

52. No cause shall be removable from the court otherwise than by a writ of certiorari, or by the order of a Judge of one of the superior courts, or by the special order of the Lord High Chancellor, the Master of the Rolls, or one of the Vice-Chancellors, and every writ of certiorari shall be made returnable immediately, whether in or out of term.

It is difficult to give any meaning to this section. Prior to the passing of this Act no court had power to remove before itself any record of this court, except the Court of Queen's Bench by prohibition. To what court and for what purpose are these removals to be made? It would seem to be far better to make this court a portion of the superior courts, in fact a permanent nisi prius court with separate offices of its own: at present, with all these contradictory and impossible clauses, nothing but doubt and confusion can arise; either this should be done, or it should loose its

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dignity as a Queen's court, and become, as it is called, merely the Mayor's Court.

Compensation to officers of abolished courts, &c.

53. Every person who is legally entitled to any franchise or office in either of the Sheriff's courts whose office shall be abolished, or whose office shall be deprived of any emolent by this Act, shall be entitled to make a claim for compensation to the Mayor, Aldermen, and Commons of the City of London in Common Council assembled within six months after the commencement of this Act; and it shall be lawful for the said Mayor, Aldermen, and Commons in such manner as they shall see fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation shall be claimed; and the said Mayor, Aldermen, and Commons shall in each case award such gross or yearly sum, and for such time, as they shall think just under the circumstances of each case, subject to the approval of the Lords Commissioners of Her Majesty's Treasury; and all compensation when so awarded shall be paid by the said Mayor, Aldermen, and Commons out of the funds of the said city.

Interpretation of terms.

54. In this Act the following words and expressions shall have the several meanings hereby assigned to them (unless there be something in the subject or context repugnant to such construction); that is to say,

The word "person" shall include corporations whether aggregate or sole:

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The words "the Mayor's Court," or "the court," shall mean the court of our Lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London:

The words "the Judge" shall mean the Judge of the Mayor's Court, or the person authorised to sit or sitting as Judge therein.

The words "the superior courts," shall mean Her Majesty's Superior Courts of Common Law at Westminster:

The words "the Registrar" shall mean the Registrar of the Mayor's Court, and shall include the deputy of such Registrar, or the person appointed to perform or performing the duties of Registrar.

It may be argued from the fact that the meaning to the words Mayor's Court and superior courts here given in the one case shewing that this court is a Queen's court and the other dissipating any idea of relative superiority, proves clearly enough the equality of these several courts, and at any rate takes away any weight from the argument that either of them are elevated or lowered by this Act at the expense of the other.

Expenses of Act.

55. The costs of and relating to the passing of this Act shall be paid out of the fees of the court.

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SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

To the Judges of the Mayor's Court of the City of London.

Be pleased to summon
of to answer touching the
Debt, £ Debt due to by the
Costs - of the Court of Mayor and Aldermen of the said
——— City on behalf.
£ Dated this day of in the year
——— of our Lord one thousand eight hundred and
. of
in the of
Judgment signed the .
or order dated. day of one thousand
eight hundred and .

Attorney for the said

SCHEDULE (B).

In the Mayor's Court, London.

You are hereby required to appear before the Court of our Lady the Queen holden before the Mayor and Aldermen of the City of London at the
Debt, £ Guildhall of the said City on
Costs - the day of at of
——— the clock in the forenoon of the same day precisely,
£ touching the not having paid to
——— of in the

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of the sum of recovered in a certain of the said court.

Dated this day of in the year of our Lord one thousand eight hundred and .

By order of the Court,

To of
in the City of London,
(*or* County of)

SCHEDULE (C.)

In the Mayor's Court, London.

At a court holden the day of in the year of our Lord one thousand eight hundred an .

Debt, £ Costs - ——— £ ———

WHEREAS at the time of the granting the summons herein-after mentioned was and now is indebted to in the sum of pounds shillings and pence, and no more, besides costs of suit amounting to pounds shillings and pence, by virtue of a of this court on the day of in the year of our Lord one thousand eight hundred and : And whereas the said to enforce the payment of such debt did on the day of in this present year obtain a summons from this Court, by which summons the said was required to appear before this court at the Guildhall aforesaid this day: And whereas the said hath been duly served with the said summons, but he hath not attended as required

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by the said summons, and hath not alleged a sufficient excuse for not attending:

Now it is ordered, that the said shall be committed for the term of days to the debtors prison for the City of London.

By the Court,

To
One of the Serjeants-at-Mace of this court
his deputy, and to the keeper of the debtor's prison (above mentioned) for the City of London.

In the Mayor's Court, London.

At a court holden the day of in the year of our Lord one thousand eight hundred and .

Debt, £
Costs -
£

WHEREAS now is indebted to in the sum of pounds shillings and pence, and no more, besides costs of suit amounting to pounds shillings and pence, by virtue of a of this court on the day of in the year of our Lord one thousand eight hundred and : And whereas the said to enforce the payment of such debt did on the day of in this present year obtain a summons from this court, by which summons the said was required to appear before this court at the Guildhall aforesaid this day: And whereas the said hath been duly served with the said summons, and hath attended as required by the said summons And whereas the said appears to have [the means of paying such debt, but hath not

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paid the same at such times as this court hath here-
*or has refused to disclose his property [*or as the case may be*].
tofore ordered] :*
Now it is ordered that the said shall be committed for the term of days to the debtor's prison of the City of London.

By the Court,

To
One of the Serjeants-at-Mace of this court

his deputy, and to the keeper of the debtor's prison (above mentioned) for the City of London.

SCHEDULE (D.)

In the Mayor's Court, London.

against

Sir,

TAKE notice, that I shall attend at the offices of the court, situate on at o'clock, to sign judgment against you herein. And further take notice, I shall at the same time apply for an order for the payment by you of the said debt by instalments, or such other order as the court may think fit to make herein.

Yours, &c.,

Plaintiff's Attorney.

To Mr.
the above-named defendant.

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FORMS OF PROCEDURE.

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FORMS OF PROCEDURE.

The following forms of procedure are of authority. No forms of pleading have been given, because there is nothing special to this court, except the single count of concessit solvere, and it is impossible to give with any satisfactory result a few precedents which can safely meet the multifarious and extraordinary circumstances of even ordinary cases; and the practitioner must resort to the ordinary works on pleading for information on this head. The assistance of counsel or a pleader should, if possible, be obtained at an early stage of the pleadings, that the action may be brought in proper form, or the impossibility or improbability of success ascertained before any expense has been incurred.

It is, perhaps, not saying too much when it is asserted that a considerable majority of the cases brought to trial ought to have been stopped by concession, either on the part of the plaintiff or of the defendant; indeed, owing to the obscurity of the present system of pleading, it is often difficult to discover the real object of the action.* With this view it is suggested that it would be wiser to consult the counsel who it is intended shall ultimately conduct the case should it come to trial, who will probably be better able than a pleader to appreciate its real difficulties. It must be remembered that it is always a dangerous experiment in legal matters to adapt to a particular case precedents with which the adaptor is not perfectly familiar; of course these observations do not apply to cases of simple debt or others of an equally simple nature.

* Since this was written this objection has been met with a vengeance by the substitution of the present system of pleading: we are launched into chaos only to re[illegible]he loss we have sustained.

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1.

Præcipe, Action.

In the Mayor's Court, London.

day o 18 .

Defendant [the character in which the plaintiff sues must be given, but not his address] at the suit of

Plaintiff.

In an action [no form of action need be stated] to recover the sum of pounds [*or*, in action of ejectment.]

G.H.

Plaintiff's Attorney.

of

2.

Copy Action and Notice.

In the Mayor's Court, London.

day of 18 .

Defendant, at the suit of Plaintiff.

In an action, &c. [*as in form* No. 1.] G.H.

Plaintiff's Attorney.

of

Take notice that the above action has been commenced against you, and unless you appear thereto within eight days from the service hereof, judgment will be issued against you by default.

The plaintiff claims the sum of for [*here state particulars of the claim*] and for costs; and if the same be paid to me within eight days from the service hereof, all further proceedings will be stayed.

Yours, &c.,

G.H.

To Plaintiff's Attorney.

the abovenamed Defendant of

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3.

Affidavit for Order for Service of Plaint out of Jurisdiction of the Court.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

I of &c., make oath and say, that the cause of action herein arose within the jurisdiction of this court [*instead of this statement the deponent may, if preferred, set out the facts of the case, showing circumstances sufficient to give the court jurisdiction*], and that the defendant resides and carries on business at &c., out of the jurisdiction of this court: and I further say, that I believe that the defendant has not any place of business within the city of London, and that I am not aware of any place within the same where the said defendant may be served with the process of this court.

Sworn at the Mayor's Court office, London, this day 18 , before me

[*If the Affidavit be sworn by a Foreigner, the following will be the form of Jurat*]:

Sworn at the Mayor's Court office, London, the day of 18 , by the deponent [A.B.], the contents of the above affidavit having been first read over and explained to him in the [ ] language, by [*name of interpreter*] of [*address and occupation of interpreter*], who was first sworn duly to interpret the same: before me, &c.

[*If the Affidavit be sworn by a person unable to write his name, or otherwise appears to be illiterate, the Jurat will be as follows*]:

Sworn at the Mayor's Court office, London, the day of 18 , before me. And I do hereby certify that the above affidavit was first read over in my presence to the abovenamed A.B., and that he seemed perfectly to understand the same, and made his mark thereto in my presence.

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Affidavit verifying Affidavit made before a Magistrate in any County in England, or in Scotland or Ireland.

In the Mayor's Court, London.

I of &c., make oath and say, that I know and am well acquainted with the handwriting of , and that the said is one of Her Majesty's Justices of the Peace in and for the town of in the county of in England [*or* one of the judges of the Supreme Court of Scotland, *or* one of Her Majesty's Justices of the Peace in and for the town of in that part of the United Kingdom of Great Britain and Ireland called Scotland *or* Ireland], and duly authorized to administer oaths, and that the name or signature, and addition " " set or subscribed to the affidavit of hereunto annexed, is of the proper handwriting of the said , as this deponent verily believes.

Sworn, &c. [*See Form of Jurat, ante*, p. 67]

4.

Affidavit for Order of Substituted Service of Plaint, where Plaint left with Wife, Servant, or Clerk of Defendant.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

I, of &c., make oath and say, that having called at the residence or place of business of the abovenamed defendant, situate for the purpose of serving him with a true copy of an action entered against him in this honourable court at the suit of the abovenamed plaintiff, sealed with seal of this court, at the foot whereof was a note addressed to the said defendant in the form directed by this court, [and also with a true copy of an order made herein for leave to serve the plaint out of the jurisdiction of the court]*; and having been unable to serve the said defendant personally therewith, I again called at the said place of business of the said defendant, on the day of and then saw the wife, [servant

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or clerk] of the said defendant, with whom I left the said sealed copy action and copy order, in an envelope directed to the said defendant, and at the same time requested her [*or* him] to deliver the same to the said defendant.

That on the day of , I again called at the said residence or place of business of the said defendant, and then and there saw the said wife, [servant, *or* clerk] of the said defendant, who in answer to my inquiry informed me that she [*or* he] had given the said envelope and its contents to the said defendant.

Sworn, &c. [*See Form of Jurat, ante* p. 67.]

The like where Plaint placed in the Letter-Box, or left with the Housekeeper at Defendant's office, &c.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

I of &c., make oath and say, that having called at the office [counting-house *or* chambers] of the above named defendant, situate, &c. [*as in the preceding form, to the asterisk*], and having been unable to serve the said defendant personally therewith, I again called at the said office [*or* counting-house, &c.] of the said defendant, on the day of but the defendant was then absent, and his said office closed. I thereupon left in the letter-box, affixed to the door of the said defendant's office, the said sealed copy action [and copy order], enclosed in an envelope addressed to the said defendant. That I again called at the said defendant's office [*or* counting-house, &c.] on the day of , and found the defendant again absent, and his said office closed; and then I inquired of the housekeeper in charge of the house wherein the said defendant's office is situate, whether the said defendant had been in attendance at his said office since the leaving of the process as aforesaid, and she replied that he had, and that she believed that the said defendant had received the letters left for him; or

That having been unable to serve the said defendant per-

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sonally therewith, I called again at the said defendant's office [*or* counting-house, *&c.*], and finding the said defendant absent, and his said office closed, I left with the housekeeper, in charge of the house where the said defendant's office is situate, the said sealed copy action [and copy order], in an envelope directed to the said defendant, and requested her to give the same to the defendant; and I afterwards, on the day of , saw the said housekeeper, who stated that she had delivered the said envelope and its contents to the said defendant, on the day of , [*or state such other circumstances, from which it may be inferred that the defendant evades service of the process, or that it has reached his knowledge.*

Sworn, &c. [*See Form of Jurat, ante* p. 67.]

5.

Præcipe, Appearance.

In the Mayor's Court, London. Plaintiff.

Defendant [if defendant has been sued in a wrong name he should appear by his right name, "sued as," &c.]

Action entered day of 18 .

Appearance of defendant day of 18 .

E.F.

Defendant's Attorney,

of

6.

Notice of Appearance.

day of 19 .

In the Mayor's Court, London.

against

Sir,—Take notice that I have entered an appearance for the defendant herein.

Yours, &c. E.F.

To Defendant's Attorney.

Plaintiff's Attorney. of

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7.

Demand of Declaration.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

The defendant demands a declaration herein, or judgment.

Dated this day of 18 .

By yours, *&c.* E.F.

To Mr. C. D. Defendant's Attorney.

Plaintiff's Attorney. of

8.

DECLARATION.

Ordinary Form of commencement and conclusion of Declaration where the Count Sur concessit solvere *is not used.* [the Declaration should correspond with the entry of the action in all particulars.]

In the Mayor's Court, London.

The day of A.D. [the day of entry of the action] A.B. by his attorney [*or* in person, *as the case may be*] sues C.D. for [*here state the cause of action. If several considerations be stated, continue as follows*]: and for, *&c.*, [*or if a second or subsequent count be added, commence it thus*]; and the plaintiff also sues the defendant for [*or*, and for the second *or* third, *or as the case may be*,] count, the plaintiff sues the defendant for [*here state in like manner the other cause or causes of action, and conclude as follows*]: and the plaintiff claims pounds, [*or if the action is brought to recover specific goods, conclude thus*]: and the plaintiff claims a return of the said goods or their value, and pounds for their detention. [*If the declaration contains a count for the recovery of specific goods, and also a count or counts for other causes of action, the conclusion may be as follows*]: and the plaintiff claims under the count a return of the goods therein mentioned and pounds for their detention, and under the residue of the declaration pounds

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Commencement of Declaration after removal of cause by Certiorari *from Mayor's court.*

In the [venu ·]

The day of A.D. .

Whereas a certain plaint was levied in the court of our Lady the Queen, holden before the Mayor and Aldermen of the city of London on the day of A.D. . against C.D., at the suit of A.B. in an action of [debt]: And whereas by a writ of *Certiorari* duly issued on the day of last out of Her Majesty's court of at Westminster, and directed to the said Mayor and Aldermen of the said city, the plaint aforesaid with all things touching the same, together with that writ and the return thereto, were sent into the said court of , and therefore the said A.B. by his attorney, declares against the said C.D. for [*here state the cause of action and conclude*]: and the plaintiff claims pounds.

Count Sur concessit solvere.

In the Mayor's Court, London.

day of 18

A.B. by his attorney, demands against C.D. pounds of lawful money of Great Britain, which he owes to and unjustly detains from the said plaintiff; for that whereas the said defendant on the day of in the year of the reign of Her present Majesty Queen Victoria, at the parish of St. Helen, London [and within the jurisdiction of this court], for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff, at the parish aforesaid and within the jurisdiction aforesaid, and then being in arrear and unpaid, granted and agreed to pay to the said plaintiff the said sum of pounds above demanded, where and when he the said defendant should be thereunto afterwards required: yet notwithstanding the said defendant, although often thereto requested, hath not yet paid to

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the said plaintiff the said sum of pounds above demanded, or any part thereof, to the damage of the said plaintiff Twenty shillings; and therefore he brings his suit, &c.

9.

Demand of Plea.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

The plaintiff demands a plea herein, or judgment.

Dated this day of 18 .

By yours, &c. E.F.

To Mr. Plaintiff's Attorney.
Defendant's Attorney. of

10.

PLEAS.

Commencement of Plea. [all pleas in the Mayor's Court must be signed.

In the Mayor's Court, London.

The day of A.D. 18 .

B. ats A. 1. The defendant, by his attorney [or in person], says [*here state the substance of the plea*]; *if a second plea be pleaded, say*: 2. And for a second plea the defendant says [*here state the substance of the plea*]: *no formal conclusion is necessary.*

E.F.
Defendant's Attorney,
[*or* Defendant in person],
of

11.

Plea to the Jurisdiction where the amount claimed in the action exceeds fifty pounds.

day of A.D.

And the defendant in his own proper person comes and

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says that this court ought not to have or take further cognizance of this action, because he says that the said supposed causes of action, and each and every of them, accrued to the plaintiff out of the jurisdiction of this court and not in the parish of St. Helen, London, or elsewhere within the jurisdiction of this court*, and this the defendant is ready to verify; wherefore he prays judgment, whether this court can or will take further cognizance of this action.

C.D.
Defendant in person,
of

12.

Affidavit verifying the truth of a plea to the jurisdiction.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

I of *&c.*, the abovenamed defendant in this cause, make oath and say, that the plea hereunto annexed is true in substance and fact.

Sworn, &c. *See form of Jurat, ante* p. 67.]

Cassetur Bill a.

And hereupon on the day of the plaintiff inasmuch as he caused the matters above pleaded prays judgment and that the above bill original may be quashed to the intent that the plaintiff may sue out a better bill against him. Thereupon it is considered that the said Bill original be quashed, *&c.*

13.

Subpœna ad testificandum.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To greeting: We command you, and each of you, that you be and appear in our court to be holden before the Mayor and Aldermen of the city of London, in the

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chamber of the Guildhall of the same city, on the day of at of the clock in the forenoon and so on from day to day until the cause hereinafter mentioned shall be tried, to testify the truth according to your knowledge, in a certain cause depending in the same court and then and there to be tried, between plaintiff and defendant, on the part of plaintiff [or defendant]. And this you are not to omit, on forfeiture of one hundred pounds. Witness Recorder of the said city, the day of in the year of our reign.

E.F. [Name of Registrar.]

Attorney for the plaintiff [*or* defendant].
of

NOTE.—This and the following forms are signed by the Registrar, they ought, properly, to be signed by the Lord Mayor.

Subpœna duces tecum.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To greeting: We command you and each of you, that you be and appear in our court to be holden before the Mayor and Aldermen of the city of London, in the chamber of the Guildhall of the same city, on the day of at of the clock in the forenoon, and so on from day to day until the cause hereinafter mentioned shall be tried, to testify the truth according to your knowledge, in a certain cause depending in the same court and then and there to be tried, between plaintiff and defendant, on the part of the plaintiff [*or* defendant], and also that you bring with you and produce at the time and place aforesaid [*here describe the documents required to be produced by the witness*]. And this you are not to omit, on forfeiture of one hundred pounds. Witness Recorder of the said city, the day of in the year of our reign.

E.F. [Name of Registrar.]

Attorney for plaintiff [*or* defendant],
of

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Subpœna to compel the attendance of a witness residing out of the Jurisdiction.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To greeting: Whereas it has been represented to our court holden before the Mayor and Aldermen of the city of London, in the chamber of the Guildhall of the same city, that you are a material and necessary witness in a certain cause there depending between plaintiff and defendant, and that you reside without the jurisdiction of our said court, and whereas by an order of our said court dated the day of it is ordered, that a subpœna do issue to compel your attendance on the trial of the said cause; We therefore command you that you be and appear in our said court, to be holden before the Mayor and Aldermen of the city of London, in the chamber of the Guildhall of the same city, on the day of at of the clock in the forenoon, and so on from day to day until the said cause mentioned shall be tried, to testify to the truth according to your knowledge, in the said cause depending in the same court and then and there to be tried. [*If the subpœna be for the production of documents, add,* and that you bring with you and produce at the time and place aforesaid (*here describe the documents required to be produced by the witness*)] on the part of the plaintiff [*or* defendant]. And this you are not to omit, on forfeiture of one hundred pounds.

Witness Recorder of the said city, the day of in year of our reign.

[Name of Registrar.]

E.G.

Attorney for the plaintiff [*or* defendant.]

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14.

Entry of cause for trial.

In the Mayor's Court, London.

Plaintiff.
Defendant.

Action entered day of 18 .
Notice of trial [*or* inquiry of damages, or demurrer for argument, *or* special case for argument] for day of 18 .

[*If cause entered for trial by defendant, add here the words* "per proviso."]

Debt, £

E.F., Plaintiff's Attorney.
G.H., Defendant's Attorney.

15.

Notice of trial.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

Take notice of trial [*or* inquiry of damages, &c.] in this cause [*if cause entered for trial by the defendant, add the words* "per proviso"] for the sitting of this court to be holden at the Guildhall, London, on the day of .
Dated this day of 18 .

Yours, &c. E.F.
Plaintiff's [*or* Defendant's] Attorney,

To Mr. of
Defendant's [*or* Plaintiff's] Attorney.

Venire facias.

Therefore let a jury be summoned according to the custom, *&c.*, and at the same court a precept is directed to one of the serjeants-at-mace of the said court, that he according to the custom, *&c.*, summon to the said court to be holden on the day of , twenty-four, *&c.*, by whom, *&c.*, and who neither, *&c.*, to recognise, *&c.*, because as well, *&c.*, and the same day is given to the plaintiff and defendant aforesaid to be there, *&c.*

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16.

Postea, and judgment on a verdict for plaintiff.

Afterwards, that is to say, on the day of in the year of the reign of our Sovereign Lady Queen Victoria, the jurors of the jury aforesaid being solemnly elected, tried, and sworn upon the said jury, according to the custom of the said city, to declare the truth of and concerning the premises, and to try the issue joined between the parties in the plea aforesaid, for their verdict upon their oath, say,

In an action for debt.

That the defendant was indebted to the plaintiff in pounds as within alleged [*or* that the defendant was indebted to the plaintiff in pounds, parcel of the debt within alleged, and that he never was indebted in more than that sum as within alleged], and they assess the damages of the plaintiff on occasion of the detention of the within debt over and above his costs of suit to one shilling, and for those costs to one shilling. Therefore it is considered by the court that the plaintiff do recover against the defendant the said debt of pounds, and the moneys by the jurors aforesaid in form aforesaid assessed, and also pounds for his costs of suit by the court here adjudged of increase to the plaintiff, which said debt, damages, and costs, in the whole, amount to pounds.

In an action for damages.

That the defendant did promise as within alleged [*or as the case may be stating the affirmative of the issue as found for the plaintiff*] and they assess the damages of the plaintiff on occasion of the premises within complained of by him over and above his costs of suit to pounds, and for those costs to one shilling. Therefore it is considered by the court that the plaintiff do recover against the defendant the said moneys by the jurors aforesaid assessed, and also pounds for his costs of suit, by the court here adjudged of increase to the plaintiff, which said moneys and costs, in the whole amount to pounds.

Postea, and judgment on a non-suit.

Afterwards, *&c.* [*as in the preceeding form, to the words* "and to try the issue joined between the said parties in the plea aforesaid," *and then proceed as follows*]: and were ready to give their verdict in that behalf, but the plaintiff being

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solemnly called came not, nor did he further prosecute his said suit against the defendant. Therefore it is considered by the court that the plaintiff take nothing by his bill original aforesaid, and that the defendant do go acquitted thereof without a day, *&c.*, and that the defendant do recover against the plaintiff pounds for his costs of defence.

Postea, and judgment on a verdict for defendant.

The form of this Postea will be similar to a Postea on a verdict for plaintiff, except that the finding of the jury will be in a negative of the issue, and the judgment will be the same a on a non-suit.

Postea, and judgment on a verdict, where defendant pleads to the jurisdiction of the court.

Afterwards, *&c.*, [*as in the preceding form, to the words* "for their verdict upon their oath say," *and then continue as follows*]:

For plaintiff.

That the cause of this action did [*or* did in part] arise within the said city and within the jurisdiction of this court [*or as the case may be, stating the affirmative of the issue*]: and because the said defendant hath not pleaded to or otherwise answered the bill original aforesaid. Therefore, *&c.* [*conclude as on a judgment by default*].

For defendant.

That the cause of this action did not arise within the said city and within the jurisdiction of this court [*or as the case may be, stating the negative of the issue.*] Therefore it is considered by the court that the plaintiff take nothing by this bill original aforesaid: and that the defendant go acquitted thereof without a day, *&c.*

For other forms of Postea, and judgment on verdict, see Chitty's Forms, 9th edition.

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17.

Judgment Docket.

In the Mayor's Court, London.

Plaintiff.
Defendant.

Action entered day of 18 .
Judgment for want of appearance [*or* for want of plea, *or* on withdrawal of plea, *or* on verdict, *or* on non-suit, *or* for want of prosecution *or* default under rule.]
Debt, £
Costs, £ day of 18 .

E.F.
Plaintiff's Attorney.
of

18.

EXECUTION.

Fi. Fa. on Judgment for Plaintiff.

To Sergeant-at-mace, *&c.*, or to any other serjeant-at-mace, *&c.* } By the Mayor, *&c.*

Levy on the goods and chattels of C.D., within the liberties of the city of London, pounds [*the amount of all the moneys recovered by the judgment*], which A.B. lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the chamber of the Guildhall of the said city recovered against him, whereof the said C.D. is convicted, as appears to us the said mayor and aldermen of record, together with interest upon the said sum at the rate of Four pounds *per centum per annum*, from the day of in the year of our Lord one thousand eight hundred and , on which day the judgment aforesaid was entered up. And have you the said moneys, with such interest as aforesaid, here in court without delay, to be rendered to the said A.B., and have there this precept.

Dated at the Guildhall, London, this day of in the year of our Lord one thousand eight hundred and [*the day on which the judgment was signed*]

E.F. [Name of Registrar.]
Attorney for the Plaintiff,
of

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Indorsement to be made thereon.

Levy pounds and interest thereon at Four pounds *per centum per annum*, from the day of 18 , and for this writ besides, *&c.*

The defendant is a , and resides at

Fi. Fa. on Judgment for Defendant.

To Serjeant-at-mace, *&c.*, or to any other serjeant-at-mace, *&c.* } By the Mayor, *&c.*

Levy on the goods and chattels of A.B., within the liberties of the city of London, pounds, which lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of the said city were awarded to C.D. for his costs of defence in an action lately prosecuted in the said court by the said A.B. against the said C.D., whereof the said A.B. is convicted, as appears to us the said mayor and aldermen of record, together with interest on the said sum at the rate of four pounds *per centum per annum*, from the day of in the year of our Lord one thousand eight hundred and on which day the judgment aforesaid was entered up. And have you the said moneys, with such interest as aforesaid, here in court without delay, to render the said C.D., and have there this precept. Dated at the Guildhall, London, this day of in the year of our Lord one thousand eight hundred and [*the day on which the judgment was signed,*]

[Name of Registrar.]

G.H.
Attorney for the defendant,
of

Indorsement.

Levy pounds, &c. [*as on a fi. fa, on judgment for Plaintiff.*]

The plaintiff is a , and resides at

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Ga. Sa. on Judgment for Plaintiff.

To Serjeant-at-mace, *&c.*, or to any other serjeant-at-mace, *&c.* } By the Mayor, *&c.*

Take C.D., if be to be found within the liberties of the city of London, and safely keep, so that you have body in court without delay, to satisfy A.B. pounds [*the amount of all the moneys recovered by the judgment*], which the said A.B. lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of the said city recovered against the said C.D., whereof the said C.D. is convicted, as appears to us the said mayor and aldermen of record, together with interest upon the said sum at the rate of four pounds *per centum per annum*, from the day of in the year of our Lord one thousand eight hundred and on which day the judgment aforesaid was entered up. And have there this precept. Dated at the Guildhall, London, this day of in the year of our Lord one thousand eight hundred and [*the day on which the judgment was signed*]:

[Name of Registrar.]

E.F.
Attorney for the Plaintiff,
of

Indorsement.

Take to satisfy pounds and interest thereon at four pounds *per centum per annum*, from the day of 18 , and for this writ besides, *&c.*

The defendant is a , and resides at

Ca. Sa. on Judgment for Defendant.

To Serjeant-at-mace, *&c.*, or to any other serjeant-at-mace, *&c.* } By the Mayor, *&c.*

Take A.B., if be to be found within the liberties

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of the city of London, and safely keep, so that you have body here in court without delay, to satisfy C.D. pounds, which lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the Chamber of the Guildhall of the said city were awarded to the said C.D. for his costs of defence in an action lately prosecuted in the said court by the said A.B. against the said C.D., whereof the said A.B. is convicted, as appears to us the said mayor and aldermen of record, together with interest on the said sum at the rate of four pounds *per centum per annum*, from the day of in the year of our Lord one thousand eight hundred and , on which day the judgment aforesaid was entered up. And have there this precept. Dated at the Guildhall London, this day of in the year of our Lord one thousand eight hundred and [*the day on which the judgment was signed*].

[Name of Registrar.]

G.H.
Attorney for the defendant,
of

Indorsement.

Take to satisfy pounds, &c., [*as on a ca. sa. on judgment for plaintiff.*]
The plaintiff is a , and resides at

19.

Judgment in default of appearance in an action of debt.

Because the said defendant hath not appeared hereto, Therefore it is considered by the court that the said plaintiff recover against the said defendant his debt aforesaid, and also the sum of pounds for his cost of suit.

The like in an action for damages, with award of inquiry.

Because the said defendant hath not appeared hereto, Therefore let a jury be summoned to inquire what damages

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the plaintiff hath sustained, as well on occasion of the premises as for his costs of suit in this behalf; and at the same court, &c. [*See Venire facias, and Postea, form No.* 16.

Judgment in default of appearance against one of several defendants in debt.

Because the said defendant C.D. hath not appeared hereto, wherefore the said plaintiff ought to recover against the said defendant C.D. his debt aforesaid; but because it is unknown to the court here whether the defendant E.F. will be convicted of the premises or not; and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giving of judgment in this behalf against the said defendant C.D. be stayed, until it is known whether or not the said E.F. will be so convicted; Therefore let a jury be summoned, &c. [*See Venire facias, and Postea, form No.* 16. *If the action be for damages, this form should be varied accordingly.*]

And see the various form of judgment by default given in Chitty's forms, 9th edition.

20.

Affidavit of service of plaint within the jurisdiction.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

I of (attorney's clerk), make oath and say, that I did, on the day of within the jurisdiction of this court, that is to say within the city of London, or within two hundred yards of the border thereof, personally serve the abovenamed defendant with a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form directed by this honourable court.

Sworn, &c. [*See form of Jurat, ante* p. 67.]

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Affidavit of service of plaint and order beyond the jurisdiction.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

I of (attorney's clerk), make oath and say, that I did on the day of personally serve the abovenamed defendant with a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form directed by this honourable court. And I further say, that I did at the same time serve on the said defendant a true copy of the order made herein for leave to serve the plaint out of the jurisdiction of the court [*or* a true copy of the order hereunto annexed.]

Sworn, &c. [*See form of Jurat, ante* p. 67.]

Affidavit of service of order for substituted service of plaint.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

I of (attorney's clerk), make oath and say, that I did on the day of leave at the residence [*or* place of business] of the abovenamed defendant, situate a true copy of an action entered against him in this honourable court, sealed with the seal of the said court, at the suit of the abovenamed plaintiff; and I further say, that at the foot thereof there was a note addressed to the said defendant, in the form directed by this honourable court. And I further say, that I did at the same time and place leave for the said defendant a true copy of the order hereunto annexed, marked A, [and a true copy of the order made herein for leave to serve the plaint out of the jurisdiction of the court, *or* a true copy of the order hereunto annexed, marked B.]

Sworn, &c. [*See form of Jurat, ante* p. 67.]

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21.

Judgment for want of plea.

Because the defendant hath not pleaded hereto : Therefore *&c.* [*conclude as on a Judgment in default of appearance. See form No.* 19].

Judgment on withdrawal of plea.

Because the said defendant hath withdrawn his plea pleaded herein : Therefore, *&c.* [*conclude as on a Judgment in default of appearance. See form* 19.]

22.

Record—Judgment for want of prosecution.

In the Mayor's Court, London.

Whereas an action was entered in this court against at the suit of on the day of 18 in a plea of debt [*or as the case may be*] : And whereas the said appeared thereto : And whereas the said hath not presented his suit with effect; that is to say, he hath not delivered his copy bill [*or* not replied to the plea of defendant, *or in case of other pleading, specify it* ; *or* not joined issue, *as the case may be*,] in pursuance of the demand of the defendant for that purpose made ; Therefore it is considered by the court that the plaintiff take nothing by his bill original aforesaid, and that the defendant go acquitted thereof without a day, *&c.*, and that the defendant recover against the said plaintiff pounds for his costs of defence.

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23.

Withdrawal of action where no appearance entered to plaint.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

Action entered day of 18 ,
I hereby withdraw the above action. Dated this
day of 18 .

E.F.
Plaintiff's Attorney.
of

24.

Præcipe for rule to discontinue after appearance to plaint.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

Action entered day of 18 .
Application for rule to discontinue after appearance of defendant [*or as the case may be*].
Dated this day of 18 . E.F.
Plaintiff's Attorney
of

25.

Consent to rule to stay.

In the Mayor's Court, London.

versus

We consent to a rule of court, that all further proceedings herein be stayed, the defendant undertaking to pay the sum of pounds the debt, and pounds the costs in this action, in manner following; that is to say [*here state how the debt and costs are to be paid*], on all usual terms.

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[*The usual terms are, "if default be made in the payment "of the said sums of pounds and pounds in "manner hereinbefore mentioned, then that the plaintiff, or "his executors or administrators in case of his death, be at "liberty to sign final judgment of the then or any succeeding "court day, and issue execution for the whole of the said sums "of pounds and pounds or such part thereof as "shall then remain unpaid, together with the costs of judg-"ment, execution, officers' fees, and all other incidental "expenses."*]

Witness, *&c.*

E.F. Plaintiff's Attorney.
G.H. Defendant's Attorney.
day of 18 .

26.

Judgment in default of payment under rule to stay.

Because the said defendant hath failed to comply with the terms of the order of this court, made herein on the day of A.D. 18 : Therefore it is considered by the Court that the aforesaid plaintiff recover against the said defendant the sum of pounds [parcel of the sum above demanded] for his debt, and also pounds [*the amount of costs remaining unpaid under the rule and the costs of judgment*] adjudged by the said court to the plaintiff for his costs of suit.

27.

Writ of Certiorari for removal of cause before Judgment.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the mayor and aldermen of the city of London greeting; We, being willing for certain causes to be certified of a plaint levied in our court before you against C.D., at the suit of A.B., in an action on promises [*or as the plea is*], command you that you send to us, in our High Court at Westminster immediately after the receipt of this writ, the plaint afore-

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said, with all things touching the same, as fully entirely as it remains in our court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done. Witness [*name of Chief Justice, or in the Exchequer the name of Chief Baron*] at Westminster, the day of in the year of our Lord 18 .

28.

Notice of Defendant's intention to remove cause, under the Mayor's Court Procedure Act, § 16.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

I hereby give you notice that it is my intention, on the part of the abovenamed defendant,to remove this cause by *Certiorari* into Her Majesty's High Court of Justice at Westminster. And further take notice that the said defendant will, with two proposed sureties, attend at the office of this court, situate at Guildhall in the city of London, on the day of at o'clock noon, to enter into the required recognizances for removal of causes in pursuance of the Mayor's Court of London Procedure Act, 1857, and that the said proposed sureties will at the same time and place justify themselves as good and sufficient sureties in that behalf. And further take notice that the names and descriptions of such proposed sureties are of [merchant], and of [merchant],

Dated this day of 18 .

Yours, *&c.* G.H.

Defendant's Attorney,

of

To E.F.

Plaintiff's Attorney.

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29.

Writ of Procedendo.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the mayor and aldermen of the city of London, greeting: Although we being willing for certain causes to be certified of a plaint levied in our court before you, against C.D. at the suit of A.B., in an action for debt [*or as the plea is*] lately by our writ commanded you that you should send to us at our High Court of Justice, Westminster, immediately after the receipt of that writ the plaint aforesaid, with all things touching the same, as fully and entirely as it remained in our court before you, by whatsoever names the parties may be called therein, together with that writ, that we might further cause to be done thereupon what of right we should see fit to be done; yet we, being now moved by certain causes in our high court before us [*thus*, yet for certain causes in this behalf specially moving our justices of the bench aforesaid, we] command you and every of you, that in the plaint aforesaid you proceed with what speed you can, in such manner according to the law and custom of England as you shall see proper, our said writ to you thereupon before directed to the contrary thereof in anywise notwithstanding. Witness [*name of Chief Justice or Chief Baron*] at Westminster, the day of in the year of our Lord 18 .

30.

Affidavit to obtain execution in High Court of Justice, on judgment in Mayor's Court.

In the Mayor's Court, London.

I of *&c.* make oath and say, that judgment was duly signed in the court of the Mayor and Aldermen of the city of London, on the day of in a certain action, wherein was plaintiff, and was defendant, for the sum of debt and costs.

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And I further say, that the parchment writing marked A, exhibited to me at the time of making this affidavit, is the record of the said action, and the judgment of the said court of Mayor and Aldermen therein, and the said judgment remains unreversed and unsatisfied, as I verily believe.

And I further say, that the signature is the signature of the proper officer of the said court of Mayor and Aldermen.

Sworn, &c. [*See form of Jurat, ante* p. 87.]

The like on order.

In the Mayor's Court, London.

I of *&c.* make oath and say, that an order was duly made in the court of the mayor and aldermen of the city of London, on the day of in a certain action, wherein was plaintiff, and was defendant, whereby it was ordered that [*here state the terms of the order*].

And I further say, that the paper writing marked A, exhibited to me at the time of making this affidavit, is the order of the said Court of Mayor and Aldermen, and the said order remains unreversed and unsatisfied, as I verily believe.

And I further say, that the signature is the signature of the proper officer of the said court of Mayor and Aldermen.

Sworn, &c. [*See form of Jurat, ante,* p. 67]

31.

Præcipe on same.

In the Mayor's Court, London.

Plaintiff

Defendant

Action entered day of 18 .

Judgment by default [*or as the case may be*].

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Debt in Plaint, £
Actual amount for which judgment signed [*or* order made], £
Costs, £ Costs of Removal, £
Judgment signed [*or* order dated] day of 18 .
Execution issued day of 18 .

E.F.
Plaintiff's Attorney,
of

32.

Request Note for Judgment Summons.

See the form given in Schedule A. to the Mayor's Court Procedure Act. Order for committal Schedule C. And for the form of Notice of Application for Order on signing judgment, see Schedule D. of the same Act.

33.

Affidavit of Service of Judgment Summons.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

I of (attorney's clerk), make oath and say, that I did, on the day of personally serve the abovenamed defendant with an original summons issuing out of and under the seal of this honourable court, a true copy of which is hereunto annexed, by delivering such original summons to the said defendant.

Sworn, *&c.* [*See form of Jurat, ante* p 67.]

34.

Copy action and notice under the Summary Procedure on Bills of Exchange Act, 1855.

In the Mayor's Court, London.

day of 18 .
defendant at the suit of plaintiff, in

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an action, &c. [*as in Form No.* 1.]

E.F.
Plaintiff's Attorney.
of

The plaintiff claims pounds, principal and interest, [*or* pounds, balance of principal and interest], due to him as the payee [*or* indorsee] of a bill of exchange [*or* promissory note], of which the following is a copy [*here copy bill of exchange or promissory note and all indorsements upon it*], and pounds for costs; and if the amount thereof be paid to the plaintiff or his attorney within eight days from the service hereof, further proceedings will be stayed.

Take notice that the above action has been commenced against you, and unless within twelve days after the service hereof, inclusive of the day of such service, you obtain leave from the said court to appear thereto, and do within such time cause an appearance to be entered thereto, the plaintiff will be at liberty at any time after the expiration of such twelve days to sign final judgment for any sum not exceeding the sum above claimed and the sum of pounds for costs, and issue execution for the same.

Leave to appear may be obtained on an application to the said court, supported by affidavit, showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

Yours, *&c.* E.F.
Plaintiff's Attorney,
of

To the abovenamed defendant.

Judgment thereon in default of appearance.

See the form in Schedule D. to Act.

35.

Consent to Reference.

Form may be obtained gratis at the office.

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36.

Writ of ejectment.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To X. Y.Z., and all persons entitled to defend the possession of [*describe the property with reasonable certainty*] in the parish of in the city of London, to the possession whereof A.B. and C., some or one of them claim to be [*or* to have been on and since the day of A.D.] entitled, and to eject all other persons therefrom. These are to will and command you or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our court holden before the Mayor and Aldermen of the city of London in the Chamber of the Guildhall of the same city, to defend the said property, or such part thereof as may be advised, in default whereof judgment may be signed, and you turned out of possession.

Witness esq., Recorder of the said city, the day in the year of our reign.

[Name of Registrar.]

Indorsement.

This writ was issued by of attorney for the said plaintiff.

37.

Writ of possession in ejectment upon a judgment by default.

To Serjeant-at-mace, *&c.*, or to any other serjeant-at-mace, *&c.* } By the Mayor, *&c.*

Whereas A.B. lately in the Queen's Majesty's Court holden before us the said mayor and aldermen in the chamber of the Guildhall of the city of London, by the judgment of the same court, recovered possession of [*here describe the premises as in the writ of ejectment*] with the appurtenances: Therefore we command you that without delay you cause the said A.B. to have possession of the said

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land and premises with the appurtenances, and in what manner you have executed this precept, make appear to us immediately upon the execution hereof, and have you there then this precept.

Dated at the Guildhall, London, this day of A.D. 18 .

To E.F. [Name of Registrar.]

Attorney for the Plaintiff,
of -

38.

Notice of application for order.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.

Take notice, I shall apply to the court to be holden at the office of the court to-morrow at o'clock [*some time between the hours of twelve and two*], for an order for [*here state the purport of the application*].

Dated this day of 18 .

By yours, *&c.* E.F.
Plaintiff's [*or* Defendant's] Attorney.

To Mr.
Defendant's [*or* Plaintiff's]
Attorney.

39.

Application by infant to sue or defend by next friend or guardian (*a.*)

In the Mayor's Court, London.

Application of A.B. [the infant] of to commence and prosecute an action against C.D., for the goods sold and delivered [*or as the case may be; or, in the case of an infant defendant*, to appear and defend the abovementioned action (*a*)] by E.F., of as the next friend [*or* guar-

(*a*) In case of a defendant, the application should be intituled in the cause.

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dian, *if for a defendant*] of the said A.B., he being an infant under the age of twenty-one years.

Dated this day of 18 .

Witness, *&c.* [Signature of Infant.]

I, E.F. of do hereby consent and agree, that the abovenamed A.B. shall be at liberty to commence and prosecute an action against the abovenamed C.D., by me as his next friend [*or* to defend the abovenamed action by me as his guardian], in pursuance of the above application.

Dated this day of 18 .

Witness, *&c.* [Signature of next Friend or Guardian.]

43.

Application for costs under section 11 *of the Mayor's Court Procedure Act.*

In the Mayor's Court, London.

Plaintiff.
Defendant.

Take notice, you are hereby required to attend at on the day of at o'clock in the noon, to show cause why the plaintiff should not be at liberty to recover his costs herein, and why the plaintiff should not have judgment to recover such costs accordingly.

Dated this day of

Yours, *&c.* E.F.

To Mr. G.H. Plaintiff's Attorney.

Defendant's Attorney.

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TABLE OF COSTS.

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TABLE OF COSTS.

PLAINTIFF'S COSTS.

[*All items marked thus * are allowed according to the merits of the case; the amounts inserted are allowed in ordinary cases.*]

	Under £10.		Out of pocket.		£10 and und. £20		Out of pocket.		£20 and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Letter	3	0	...		3	6	...		3	6		
Instructions for Action	3	0	...		3	4	...		6	8		
Action, and paid ...	10	0	4	0	15	6	4	6	17	6	5	0
Copy and service‡ ...	2	6	...		2	6	...		2	6		
	18	6			24	10			30	2		

* 3s. 4d. extra is allowed for every additional defendant.

Service of plaint out of the jurisdiction.

In addition to the ordinary charges.

Affidavit, &c.	1	0	4	0	1	0	6	0	2	0		
Copy order to serve			1	0	...		1	0				

The above costs are allowed for service within three miles of the General Post Office, but where defendant resides beyond that distance extra costs will be allowed, according to the distance of the residence of the defendant, or for agent's charges.

Under £10 the 1s. paid upon the affidavit only will be allowed.

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The costs are marked at the time of the grant of the order for service of the plaint out of the jurisdiction.

	Under £10.		Out of £10 and pocket.		Under £20.		Out of £20 and pocket.		above.		Out of pocket.	
Substituted service of plaint.												
Action.	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Affidavit	4	0	1	0	6	0	1	0	7	0	1	0
Extra copy action, and paid	1	0	0	6	1	0	0	6	1	0	0	6
Attending for order including service, and paid	...		...		5	0	1	0	7	0	2	0
	5	0			12	0			15	0		

Under £10 no allowance will be made for attending for the order, and on such a verdict plaintiff cannot recover a quarter amount of costs than he would have been allowed if the action had been brought in the County Court unless the Judge certify.

Costs of Trial.	Under £20. *s.*	*d.*	Out of £20 and above. *s.*	*d.*	Out of pocket. *s.*	*d.*
In addition to costs at p.						
*Instructions to proceed... ...	3	4	...	6	8	
*Copy declaration and demand of plea	3	0	...	4	0	
Instructions for brief† ...	6	8	...	13	4	
Brief† :						
In ordinary cases	23	0				
Drawing, per folio	1	0	...	1	0	
Copy, per folio	0	4	...	0	4	
Entering plea on record, joinder of issue, demurrer, &c., and notice	4	0	...	6	0	
If special, above three folios, per folio	0	4	...	0	4	

* In special cases, discretionary. In ordinary cases under £10. 15s. only will be allowed for brief.

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	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Entering cause for trial and notice, and summoning jury ...	9 0	4 0	12 0	5 0
*Notice to inspect and admit, and notice to produce each ordinary	4 0	...	5 0	
Attending inspection ...	3 4	...	6 8	
Affidavit of notice to produce, *&c.*	4 0	1 0	5 0	1 0
Subpœna, *vide* Writs.				
Searching, if cause in paper ...	3 4	...	3 4	
Fee to counsel, *vide* Fees to Counsel.				
Attending counsel†	3 4	...	6 8	
*Attending court	3 4	...	6 8	
Entering verdict on record, and paid	6 0	3 0	8 0	5 0
Notice of taxing	2 0	...	3 0	
*Bills of costs and copy ...	4 0	...	6 0	
Signing judgment and paid ...	7 0	4 0	12 0	5 0
Attending taxing, and paid ...	4 4	1 0	8 8	2 0
*Letters, *&c.*	3 4	...	6 8	
Marking cause a remanet ...	3 0	3 0	4 0	4 0
Affidavit of increase and copy†	6 0	1 0	6 0	1 0

Judgment in default of appearance.

	Under £10.	Out of pocket.	£10 and und. £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Costs as at p. ...	18 6	...	24 10	...	30 2	
Instructions to proceed	...	...	3 4	...	6 8	
Affidavit of service ...	5 0	1 0	5 0	1 0	6 0	1 0
Judgment ...	5 6	2 6	6 6	3 6	11 0	4 0
	29 0		39 8		53 10	

* In special cases, discretionary. In ordinary cases under £10. 15*s.* only will be allowed for brief.

† An affidavit of increase is not required or allowed unless called for by the opposite party.

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The foregoing costs are marked without taxation, if extra costs have been incurred within the eight days allowed for appearance; as for particulars of demand and the like, the plaintiff must tax his costs upon notice.

Judgment for want of plea.

	Under £10.		Out of pocket.		£10 and und.		Out of pocket.		£20 and above.		Out of pocket.	
Costs as at p. ...	18	6	...		24	10	...		30	2		
*Instructions to proceed	...		...		3	4	...		6	8		
*Copy declaration to deliver, and demand of plea	3	0	...		3	0	...		4	0		
Judgment	6	0	3	0	7	0	4	0	12	0	5	0
Bill of costs ...	2	0	...		3	0	...		4	0		
Notice taxing ...	2	0	...		2	0	...		3	0		
Attending taxing and paid	3	4	1	0	4	4	1	0	5	4	2	0
* Letters, &c. ...												

Incident to rule for payment of debt by instalments, and judgment.

	Under £20.		Out of pocket.		£20 and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Attendances upon defendant on terms of settlement, and drawing consent	6	8	...		13	4		
Drawing up rule and service ...	4	4	1	0	5	4	2	0
If costs not agreed, add								
Notice of taxing	2	0	...		3	0		
Attending taxing and paid ...	4	4	1	0	5	4	2	0
When plaintiff is entitled to immediate judgment by his rule, in lieu of the last item, charge								
Attending taxing and signing judgment	8	0	5	0	13	0	6	0
Instructions to proceed to judgment on account of nonpayment of instalments by defendant	2	6	...		3	4		
Signing judgment marked without taxation	7	0	4	0	12	0	5	0

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Pleadings.

	Under £20. s. d.	£20 and above. s. d.
If the declaration exceeds the allowance of four folios, calculated in the costs of the Plaint, 1s. per folio, drawing. engrossing, and copy to deliver.		
One or more pleas of three folios or under, exclusive of instructions, but inclusive of engrossing	4 0	5 0
If above three folios, for every folio 1s.		
Attending pleader	3 4	3 4
Paid, *vide* Fees to Counsel.		

No Special Declaration will be allowed in cases in which the *Concessit solvere* will apply.

Fees to Counsel.

In ordinary cases, including clerk	23 6	44 6
Refresher „	23 6	23 6

In special cases extra fees will be allowed, as also more than one counsel, according to the merits of the case.

Refreshers will be allowed where a cause is postponed from one sittings of the Court to another, but not to an adjournment day. No refresher will be allowed in cases under £10, unless very special.

Pleaders' fees will only be allowed in special cases.

Consultations or advice on evidence will only be allowed in very special cases.

Paying Money in and out of Court.

	Under £50.	Out of pocket.	Above £50.	Out of pocket.
Attending	3 4	...	6 8	
	s. d.			
Paid, under £5 ...	1 0			
£5 and under 10 ...	1 6			
10 „ 20 ...	2 0			
20 „ 50 ...	2 6			
50 and upwards ...	5 0			
Replication, taking money out of Court in satisfaction ...	4 0	...	0	

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	Under £50.	Out of pocket.	Above £50.	Out of pocket.
	s. d.	*s. d.*	*s. d.*	*s. d.*
Signing judgment in case of default being made in payment of the costs taxed, marked without taxation ...	7 0	4 0	12 0	5 0

Witnesses.

	s. d.		*s. d.*
Labourers or journeymen, police constables or inspectors	3 6	to	7 0
Master tradesmen, clerks, *&c.*	5 0	to	10 6
Professional men, auctioneers, engineers, notaries, gentlemen, esquires, bankers, merchants ...	10 6	to	21 6

Travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid, but in no case shall exceed 1s. per mile one way.

No allowance will in any case be made to plaintiff or defendant, except for travelling expenses.

Writs.

	Under £10.	Out of pocket.	£10 and un. £20.	Out of pocket.	£20 and above.	Out of pocket
	s. d.	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d*
Ca. Sa. or Fi. Fa ...	5 0	1 0	5 0	1 0	7 0	2 0
Spa. ad test. ...	5 0	1 0	5 0	1 0	5 0	1 0
Spa. duces tecum ...	6 0	1 0	6 0	1 0	6 0	1 0
Application and order for Spa. for service out of jurisdiction	Same allowance as upon an application for service of plaint out of the jurisdiction.					
Service of Spa. within three miles of the General Post Office	2 6	...	2 6	...	2 6	
If beyond three miles	Same allowance as upon plaint for a service out of the jurisdiction.					

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Judgment Summons.

	Under £10.	£10 and und. £20	£20 and upwards.
	s. d.	*s. d.*	*s. d.*
Application for summons and paid ...	...	2 6	2 6
Copy and service of summons ...	2 6	2 6	2 6
Attending Court	3 4	3 4	6 8
Copy and service when debtor does not appear	1 0	3 0	4 0
Notice of committal and affidavit ...	2 0	4 0	5 0

These costs will only be allowed in cases where ordered at the hearing of the summons.

Miscellaneous.

	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. d.	*s. d.*	*s. d.*	*s. d.*
Paid for certificate and oath to affidavit for removal of judgment	...	2 0	...	3 0
Notice of application for order for particulars of demand, set-off, time to deliver pleadings, and the like	2 0	...	3 0	
Attendance on each application, including order and service ...	4 4	1 0	4 4	1 0
Drawing particulars of demand or set-off, and copy, if under three folios	4 0	...	5 0	
If above three folios, Drawing per folio 8d. Copying per folio 4d.				
Demand of declaration or other pleading	2 0	...	3 0	
Attendances in general matters†	3 4	...	3 4	
Copy, notice, *&c.*, to annex to brief or record, each ...	1 0	...	1 6	
Attending withdrawing record and paid†	4 4	1 0	5 4	2 0

(If record withdrawn on day of trial, the fee out of pocket will be the same as on a verdict).

† No allowance will be made in any case for attending deponent to be sworn to affidavit.

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	Under £20.	Out of pocket.	£20 and above.	Out of pocket.
	s. d.	*s. d.*	*s. s.*	*s. d.*
Instructions to counsel in common matters	3 4	...	3 4	
Circular letters	2 0	...	3 6	
After the first	1 0	...	1 6	
Affidavits, common	4 0	...	6 0	
If special, Drawing, per folio 8. Copying, per folio 4d.				

* No allowance where rule drawn up, or judgment signed on withdrawal of plea, except for the payment out of pocket.

DEFENDANT'S COSTS.

Instructions to appear ...	3 4	...	6 8		
Appearance and notice ...	8 0	3 0	9 0	3	0
Instructions for pleas ...	3 4	...	6 8		
Drawing same and copy to deliver, *Nunquam indebitatus* ...	4 0	...	5 0		
Attending to deliver ...	3 4	...	3 4		
Instructions for brief, brief, and further costs	Same allowance as for plaintiff's costs.				
Costs of bringing in Record per proviso.					
Entering cause for trial and notice	9 0	4 0	12 0	5	0
Notice to plaintiff's attorney to bring in record	2 0	...	3 0		
Attending searching, if record brought in	3 4	...	3 4		
Plaintiff's attorney not having lodged record, making up same	5 0	...	7 6		
If special, above seven folios, per folio	0 4	...	0 4		
On Rule to discontinue.					
Marked without taxation.					
After appearance and before declaration	15 8	...	19 2		
If demand of declaration given, extra	3 0	...	4 0		

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FEES OF SERJEANT-AT-MACE.

Actions.	£	*s.*	*d.*
Executions, not exceeding £10	0	7	6
£10 and not exceeding £20, and 6d. on each £1 above £10	0	7	6
£20 and not exceeding £50, and 3d. on each £1 above £20	0	12	6
£50 and not exceeding £100, and 3d. on each £2 above £50	1	0	0
Above £100	1	7	6
Warrant upon leaving execution	0	2	6
Executing writ of possession	1	0	0
Commitment warrant (besides mileage)	0	7	9
Fees on Verdicts.			
Under £20	0	4	0
Above £20	0	6	0

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APPENDICES.

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APPENDIX.

No. 1.

ORDER OF THE QUEEN IN COUNCIL.

London Gazette, 20th November, 1863.

At the Court at Windsor, the 17th day of November, 1863.

WHEREAS by the Common Law Procedure Act 1852, it is enacted that it shall be lawful for Her Majesty, from time to time, by an order in Council, to direct that all or any part of the provisions of the said Act, or any of the rules to be made in pursuance thereof, shall apply to all or any court or courts of record in England and Wales; and that within one month after such order shall have been made and published in the London Gazette, such provisions and rules respectively shall extend and apply in manner directed by such order, and that any such order may be in like manner from time to time altered or annulled: And whereas by the Common Law Procedure Act 1854, it is also enacted that it shall be lawful for Her Majesty, from time to time, by an order in Council, to direct that all or any part of the provisions of that Act, or the rules to be made in pursuance thereof, shall apply to all or any court or courts of record in England and Wales, and that within one month after such order shall have been made and published in the London Gazette, such provisions and rules respectively shall extend and apply in manner directed by such order, and that any such order may be in like manner from time to time altered or aunulled; aud that in and by any such order Her Majesty may direct by whom any powers or duties incident to the

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provisions applied under the same Act, or the Common Law Procedure Act 1852, shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas by the Summary Procedure on Bills of Exchange Act 1855, it is also enacted that it shall be lawful for Her Majesty, from time to time, by an order in Council, to direct that all or any of the provisions of that Act shall apply to all or any court or courts of record in England or Wales; and that within one month after such order shall have been made and published in the London Gazette, such provisions shall extend and apply in manner directed by such order, and that any such order may be in like manner from time to time altered or annulled; and that in and by such order Her Majesty may direct by whom any powers or duties incident to the provisions applied under the same Act shall or may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas by the Common Law Procedure Act 1860, it is also enacted that it shall be lawful for Her Majesty, from to time to time, by an order in Council, to direct that all or any part of the provisions of that Act shall apply to all or any court or courts of record in England or Wales, and that within one month after such order shall have been made and published in the London Gazette, such provisions and rules respectively shall extend and apply in manner directed by such order, and that any such order may be in like manner from time to time altered and annulled; and that in and by any such order Her Majesty may direct by whom any powers or duties incident to the provisions applied under that Act shall and may be exercised with respect to matters n such court or courts, and may make any order or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied:

And whereas by the Mayor's Court of London Procedure Act 1857, it is enacted that it shall be lawful for Her Majesty, from time to time, by an order in Council, to direct that all or any part of

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the provisions of any Act for the amendment of the law then passed or thereafter to be passed, and also all or any of the rules and regulations made in pursuance thereof, shall extend to and apply to the Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that within one month after such order shall have been made and published in the London Gazette, such provisions and rules respectively or parts thereof (and the forms necessary in respect thereof), shall extend and apply in manner directed by such order, and that any such order may be in like manner altered and annulled; and that in and by any such order Her Majesty may direct by whom any such powers or duties incident to the said provisions applied under the several Acts and rules in respect thereof shall and may be exercised with respect to the matters in such court, and may make any order, regulation or form which may be deemed requisite for carrying into operation in such court the provisions so applied:

And whereas it has seemed fit to Her Majesty, by and with the advice of Her Majesty's Privy Council, that such of the provisions of the said several hereinbefore-mentioned Acts, as are hereinafter respectively in that behalf mentioned, shall be extended and applied to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London:

Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, that within one month after this order shall have been published in the London Gazette such of the provisions of the said Common Law Procedure Act 1852, with respect to writs for the commencement of personal actions, as are contained in the sections numbered respectively 3, 7, 16, and 17, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the appearance of the defendant, and proceedings of the plaintiff in default of appearance, as are contained in the sections numbered respectively 32 and 33, in the copy of the said Act printed by Her Majesty's Printer; and such of the pro-

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visions of the same Act, with respect to the joinder of parties to actions as are contained in the sections numbered respectively 34, 35, 36, 37, 38, 39, and 40, in the copy of the said Act printed by Her Majesty's Printer; and the provisions of the same Act with respect to the joinder of causes of action contained in the section numbered 41, in the copy of the said Act printed by Her Majesty's Printer: and such of the provisions of the same Act, with respect to the determination of questions raised by the consent of the parties, without pleading, as are contained in the sections numbered respectively 42, 43, 44, 45, 46, 47, and 48, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the language and form of pleadings in general, as are contained in the sections numbered respectively 49, 50, 51, 52, 53, 54, 55, 56, and 57, in the copy of the said Act printed by Her Majesty's Printer, shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that all the said sections hereinbefore mentioned shall be read as if the word "plaint" had been used therein, instead of the words "writ of summons" or "writ." And that such of the provisions of the same Act, with respect to the time and manner of declaring, as are contained in the sections numbered respectively 60 and 61, in the copy of the same Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to pleas and subsequent pleadings, as are contained in the sections numbered respectively 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, 77, 78, 79, 80, 87, 88, and 89, in the copy of the same Act, printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the statement of causes of action and forms of pleading, contained in the 91st section, and schedules A and B of the copy of the same Act printed by Her Majesty's Printer (except the forms numbered respectively 1, 2, 3, 4, and 5, in the said schedule A), shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the Chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, and that the said section numbered 69

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shall be read as if the words "and such plea may when necessary be pleaded at Nisi prius between the 10th day of August and 24th of October," had not been inserted therein. And that such of the provisions of the same Act, with respect to judgment by default and the mode of ascertaining the amount to be recovered thereupon, as are contained in the sections numbered respectively 94, 95, and 96, in the copy of the said Act printed by Her Majesty's Printer: and such of the provisions of the same Act, with respect to the admission of documents, as are contained in the sections numbered respectively 117, 118, and 119, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to execution, as are contained in the sections numbered respectively 123, 124, 125, and 126, in the copy of the said Act printed by her Majesty's Printer; and such of the provisions of the same Act, with respect to proceedings for the revival of judgments and other proceedings by and against persons not parties on the record, as are contained in the sections numbered respectively 128, 129, 130, 131, 132, 133, and 134, in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to the effect of death, marriage, and bankruptcy upon the proceedings in an action, as are contained in the sections numbered respectively 135, 136, 137, 138, 139, 140, 141, 142, in the copy of the said Act printed by Her Majesty's Printer; and all the provisions of the same Act, with respect to the proceedings upon motions in arrest of judgment, and for judgment *non obstante veredicto*, which are contained in the sections numbered respectively 143, 144, and 145, in the copy of the said Act printed by Her Majesty's Printer (except such part of the said section numbered 143 as relates to a motion in arrest of judgment pursuant to the statute of the first year of the reign of King William the Fourth, chapter seven), and all the provisions of the same Act contained in the sections numbered respectively 146, 147, 148, 149, 150, 151, 152, 153, 154 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 in the copy of the said Act printed by Her Majesty's Printer; and such of the provisions of the same Act, with respect to actions of ejectment, as are contained in the sections numbered respectively 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178,

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179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 218. 219, 220, and 221, in the copy of the said Act printed by Her Majesty's Printer ; so far as such provisions extend, or are or may be applicable to an action of ejectment between landlord and tenant, shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London ; and that the provisions of the same Act, with respect to the power to make rules and regulations, and to frame writs and proceedings for the purpose of carrying the same Act into effect, which are contained in the sections numbered respectively 223, 224, and 225, in the said copy of the Act printed by Her Majesty's Printer, shall also extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London ; and the powers thereby conferred shall and may be exercised, so far as may apply to the said court, by the Judge thereof. And that the provisions of the same Act, with respect to the effect of injunctions and orders to stay proceedings, contained in the 226th section of the copy of the said Act printed by Her Majesty's Printer, shall also extend and apply to injunctions, rules and orders of the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, or the Judge thereof.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the provisions of the Common Law Procedure Act 1854 (save only and except such as are contained in the sections numbered respectively 2, 35, 36, 37, 38, 39, 40, 42, 43, 76, 77, 95, 99, 100, 101, 102, 104, 105, 106, and 107, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

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And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the provisions of the Summary Procedure on Bills of Exchange Act 1855 (save only and except such as are contained in the sections respectively 8, 9, and 10, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of ecord of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London. And that the said several sections and the schedules to the said last-mentioued Act shall be read as if the word "plaint" had been used therein, instead o the words "writ of summons" or "writ," and that all the powers and duties exerciseable by "the Court" or "a Judge" shall, as regards matters and proceedings in the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exerciseable and exercised by the said court or the Judge thereof; and that all the powers and duties exerciseable by the Masters of the superior courts, or any three of them, under the first section of the said last-mentioned Act, shall, as regards matters and proceedings in the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exerciseable and exercised by the Registrar of the said court, subject to the approval of the Judge thereof.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and provisions of the Common Law Procedure Act 1860 (save and except such as are contained in the sections numbered respectively 22, 23, 24, 25, 26, 27, 40, 41, 42, 43, 44, 45, and 46, in the copy of that Act printed by Her Majesty's Printer), shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that the powers

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and provisions of the Act of Parliament, passed in the session of Parliament, holden the 8th and 9th years of Her Majesty's reign, intituled "An Act for the better securing the payment of small debts," contained in the section of the same Act numbered one in the copy thereof printed by Her Majesty's Printer (so far only as relates to summoning, hearing, and making any order, or committing, as therein specified), and also the powers and provisions contained in the sections of the same Act, numbered 3 and 18 in the copy thereof printed by Her Majesty's Printer, and the powers and duties incident to such provisions respectively shall be exercised by the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, as the said court is constituted or allowed to be holden under the said "Mayor's Court of London Procedure Act 1857," and that the forms to be used thereunder shall be the same as those which are contained in the schedules A, B, and C, respectively in the said "Mayor's Court of London Procedure Act 1857."

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that the provisions of the Art of Parliament made and passed in the second year of the reign of His late Majesty King William the Fourth, intituled "An Act for the uniformity of process in personal actions in His Majesty's Courts of Law at Westminster," which are contained in the section numbered one of the copy thereof printed by Her Majesty's Printer, so far as such provisions relate to the process of the said courts being served within two hundred yards of the border of any county, shall extend and apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and provisions of the Act of Parliament, made and passed the Session of Parliament, holden in the twenty-fourth year of the reign of Her Majesty, intituled "An Act to afford facilities for better ascertaining the law of Foreign Countries, when pleaded in courts within Her Majesty's Dominions," which are contained

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in the sections numbered 1 and 2 respectively, in the copy of that Act printed by Her Majesty's Printer, shall extend and apply to the Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London.

And Her Majesty is further pleased, by and with the advice aforesaid, to order, and it is hereby further ordered, that all the powers and duties exerciseable by the "Court" or a "Judge," or any number of Judges, under any of the sections of the several hereinbefore-mentioned Acts, which are hereinbefore directed to apply to the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, shall, as regards matters and proceeding in the said last-mentioned court be exercised or exerciseable by the court, as directed to be held by the "Mayor's Court of London Procedure Act 1857," and that all the powers and duties exerciseable by the Master of the superior courts, or any number of them, under any of the aforesaid sections of the said several Acts, shall, as regards matters and proceedings in the said Court of Record of Her Majesty, holden before the Mayor and Aldermen in the chamber of the Guildhall of the city of London, commonly called the Mayor's Court of London, be exercised and exerciseable by the Registrar, or his Deputy, of the said court, subject to the approval of the said court, and that the duties exerciseable by the Sheriff or Bailiff, shall, as regards matters and proceedings in the said last-mentioned court of London, be exercised and exerciseable by the Sergeant-at-mace of the same court, or his Deputy.

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No. 2.

GENERAL RULE.

As to Plea of *Nunquam indebitatus* to Count of *Concessit solvere.*

THAT the plea of Never was indebted shall be used in the said court to the customary count *Sur concessit solvere*, and will operate as a denial of those matters of fact from which the liability of the defendants arise; *exempla gratia*, in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale, or sale and delivery, in point of fact. In the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff; and, on bills of exchange and promissory notes, the drawing, making, or indorsing or accepting; but if the defence be for other matters, as not presenting or not giving notice of the dishonour, or no consideration, notice thereof must be given of such defence with the plea, but such defences as bankruptcy, or statute of limitations, *&c.*, must be pleaded.

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